

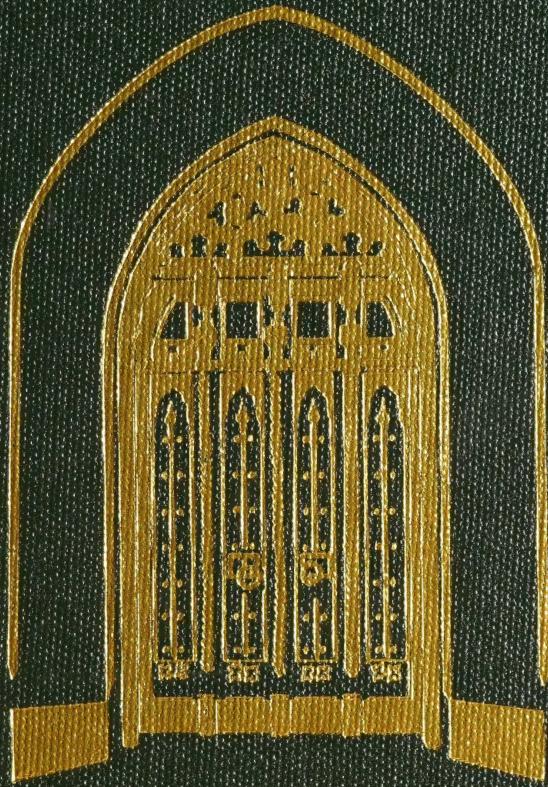
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SELECTED DECISIONS  
OF  
SPEAKER JOHN A. FRASER



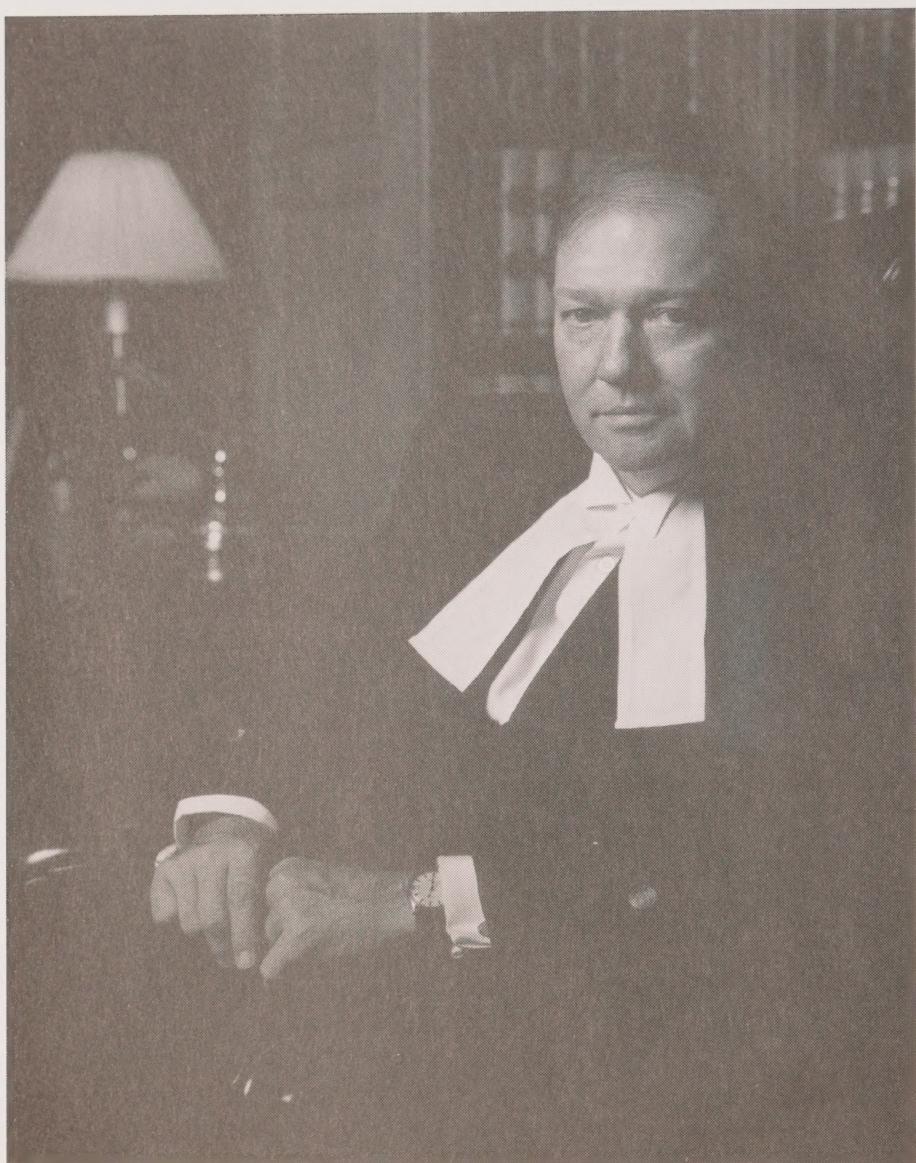
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Michael Bedford

**JOHN A. FRASER**



**House of Commons  
Canada**

**SELECTED DECISIONS  
OF  
SPEAKER  
JOHN A. FRASER  
1986 - 1993**



## Canadian Cataloguing in Publication Data

Fraser, John A. (John Allen), 1931-

Selected Decisions of Speaker John A. Fraser 1986-1993

Issued also in French under title : Recueil de décisions du  
Président John A. Fraser 1986-1993.

ISBN 0-662-27443-1 (Vol. 1)

ISBN 0-662-27444-X (Vol. 2)

Cat. No. X11-1/1999-1E

Cat. No. X11-1/1999-2E

1. Canada. Parliament. House of Commons — Rules and practice.

2. Parliamentary practice — Canada — Rulings.

I. Canada. Parliament. House of Commons.

II. Title.

JL136.F42 1999

328.71'05

C99-980031-0

Published under the authority  
of the Clerk of the House of Commons

© 1999 Clerk of the House of Commons

Cat. No. X11-1/1999-1E

Cat. No. X11-1/1999-2E

ISBN 0-662-27443-1 (Vol. 1)

ISBN 0-662-27444-X (Vol. 2)



**SELECTED DECISIONS  
OF  
SPEAKER FRASER**

**Volume I**

## **HOUSE OF COMMONS**

### **33<sup>rd</sup> Parliament**

2<sup>nd</sup> Session — September 30, 1986—October 1, 1988

### **34<sup>th</sup> Parliament**

1<sup>st</sup> Session — December 12, 1988—February 28, 1989

2<sup>nd</sup> Session — April 3, 1989—May 12, 1991

3<sup>rd</sup> Session — May 13, 1991—September 8, 1993

## **SPEAKER OF THE HOUSE**

Hon. John A. Fraser, P.C., M.P.  
September 30, 1986 to September 8, 1993

## **DEPUTY SPEAKERS AND CHAIRMEN OF COMMITTEES OF THE WHOLE HOUSE**

Hon. Marcel Danis, P.C., M.P.  
November 5, 1984 to May 15, 1990

Hon. Andrée Champagne, P.C., M.P.  
May 15, 1990 to September 8, 1993

## **DEPUTY CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE**

Hon. Steven Paproski, P.C., M.P.  
November 5, 1984 to September 8, 1993

## **ASSISTANT DEPUTY CHAIRMEN OF COMMITTEES OF THE WHOLE HOUSE**

Hon. Andrée Champagne, P.C., M.P.  
October 1, 1986 to May 15, 1990

Denis Pronovost, M.P.  
May 15, 1990 to May 31, 1990

Charles DeBlois, M.P.  
October 2, 1990 to September 8, 1993



## INTRODUCTION

The *Selected Decisions of Speaker John A. Fraser* is the sixth in a series of volumes which will bring together in a comprehensive collection all of the significant modern rulings of the Speakers of the Canadian House of Commons. Earlier volumes contained the decisions of Speakers Lucien Lamoureux (1966-1974), James Jerome (1974-1979), Jeanne Sauvé (1980-1984), Lloyd Francis (1984), and John Bosley (1984-1986). The present volume contains 193 decisions, covering the period from 1986 to 1993 when John Fraser presided over the House.

Mr. Fraser was first elected to Parliament in 1972 and was re-elected in 1974, 1979, 1980, 1984, and 1988. He served in two federal Cabinets, in 1979 and 1984-1985, under two Prime Ministers. He became Speaker following the resignation of Speaker John Bosley at the beginning of the Second Session of the Thirty-Third Parliament and presided over the entire Thirty-Fourth Parliament. He was the first Speaker to be elected, and then re-elected, by secret ballot of his peers in the House of Commons.

Following the major changes to the Standing Orders in 1968, Speaker Lamoureux presided over a time when procedure and practice was largely redefined. Similarly, during his tenure, Speaker Fraser made a number of significant and procedurally complex rulings and statements which continue to influence the evolution of our practice. He presided over a House which, at the beginning of his term, had recently revisited many of its fundamental rules and practices (this through the McGrath Committee reforms, some of which were adopted in 1987) and which would, in the subsequent years of his term, undertake even more in-depth studies and contemplate, experiment with and adopt further amendments to the Standing Orders. A number of his decisions thus formed the basic interpretation of new rules, thereby establishing precedents, or placed a new interpretation on the rules and practice, thus refining or re-defining the appropriate practice.

When delivering his rulings, many of which impacted on the progress of highly contentious legislative proposals, Speaker Fraser took especial care to situate the decision within the current political and procedural context, and manifested a particular interest in enlightening the viewing public. Among other considerations, this tendency led the editors of this volume to consider an alternative format for the presentation and publication of the rulings during his term.

Each of the selected decisions is presented in a uniform format. This format includes first a brief account of the procedural or political background which led to the issue being actually raised in the House of Commons. The text of the decision as delivered in the House by Speaker Fraser or one of his fellow presiding officers is then presented, along with any necessary footnote references. Each decision within a given chapter has a descriptive header which indicates the primary procedural issue being decided; in some cases, a postscript

explaining a pertinent outcome or subsequent action is also included. The decisions are grouped within ten chapters each of which begins with a brief introductory passage. In certain chapters, the sequence of decisions was governed strictly by order of date delivered, while in other chapters the sequence of the selected decisions was determined by the grouping of like subject-matter headings, without regard to the date and order in which they were delivered. The number of decisions selected necessitated their publication in separate English and French volumes.

There are a number of methods by which any particular decision can be located. First, the volume contains a chronological listing of all decisions. As well, there is a detailed analytical index. Both the index and chronological listing are to be found at the back of the volume. In addition, readers are encouraged to scan the descriptive headers located at the top of each decision, in order to determine if the subject-matter of the decision or even a particular aspect of that subject-matter would encourage them to view the entire decision, and to refer to the introductions to the various chapters. It should be remembered that this volume, like others in the series, represents a *selection* of key decisions. In all, Speaker Fraser and his fellow presiding officers were required to adjudicate on more than 900 occasions during the period under consideration in this volume.

I have had the privilege of serving the House in various capacities during the tenure of all six Speakers in the series of "Selected Decisions". However, for almost all of his two terms, it was as Clerk of the House that I served under John Fraser. As such, I had the opportunity to witness and to appreciate the intellectual rigour he brought to preparing and reviewing his decisions. His sense of history was surpassed only by his passion for Parliament; his devotion to the parliamentary process was matched by his steadfastness in its defense. I learned a great deal working with him. The Deputy Clerk at the time, Mary Anne Griffith, and I agree that we owe him a debt of gratitude for his guidance, his support and his inspiration.

Many people have contributed to the completion of these volumes. I would like to acknowledge their contribution and thank them for their professionalism and their tireless efforts in pursuit of excellence in this series. My thanks goes to the Table Officers involved; the staff of House Proceedings who worked so assiduously to prepare the manuscript; the staff of Parliamentary Publications who crafted the indexes and published the text; the House of Commons Printing Services who printed these volumes; and the Parliamentary Translation Services who ensured a felicitous version of the work in both official languages.

Ottawa, 1999

Robert Marleau  
Clerk of the House of Commons

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## CHAPTER 1 — PARLIAMENTARY PRIVILEGE

### Introduction

Members of Parliament individually and the House as a collectivity enjoy certain rights and immunities without which Members could not carry out their duties and the House could not fulfil its functions. These various rights and immunities, while not admitting of ready classification, are subsumed under the rubric Parliamentary Privilege. Whenever Members feel that their rights as Members have been infringed upon or that a contempt against the House has been committed, they rise on a Question of Privilege to voice their complaints. In presenting their case Members are claiming that the breach they are complaining of is of such importance that it demands priority over all other House business. It is the role of the Speaker to judge if that claim is well founded; that is, if on a *prima facie* basis, or as far as can be judged by first disclosure, it deserves privileged consideration.

In order to assess the claim, the Speaker first hears a sufficient exposé of the problem from the Member raising the complaint. Then, although he is not obliged to, the Speaker may hear comments from other Members. Speaker Fraser frequently did so and would often intervene during the course of these discussions to direct Members to focus on addressing the precise issue to be decided. While in theory, debate on a question of privilege only properly begins after the Speaker has decided that a *prima facie* question of privilege exists, in practice, there may be extensive discussion beforehand and most often, the Speaker's decision determines the issue. For example, of the eight *prima facie* cases during the Fraser Speakership, there was debate on only two of the motions permitted to be moved after the Speaker's decision — the question was put on the remaining six without debate. This trend, together with the fact that Speakers' rulings are not subject to appeal, posits great authority and concomitant responsibility in the Chair. Accordingly, after the initial airing of the issue, except in the clearest of cases, Speaker Fraser usually took the matter under advisement in order to permit him to return to the House with a considered and reasoned decision.

In reaching such a decision, the Speaker reviews the facts and the arguments advanced in the House on the issue and customarily revisits the relevant rules, authorities and precedents. In addition, at times, Speaker Fraser, in the course of his deliberations, held discussions “in chambers” with Members concerned. It should also be noted that the Speaker's decision can turn on other factors in addition to the merits of the case itself; these include the terms of the motion the Member seeks to move, evidence that the issue was raised at the first opportunity, that notice was given when required and that the question was raised at the proper point during the proceedings.

In preparing this collection, a decision was made first, to allow the issues raised to govern the organization of the chapter; and second, to integrate procedural and subject-matter classifications in an attempt to underscore the

necessary connection between the two. To facilitate this type of integration, some decisions respecting matters raised as questions of privilege are not included in the parliamentary privilege chapter but rather are captured under a chapter with which they have a direct connection. For example, several decisions responding to questions of privilege relating to committees are reported in that chapter and likewise, rulings in respect of Budget or Supply proceedings are included in the chapter on financial procedures and those respecting matters *sub judice* are in the chapter dealing with rules of debate. As a result of the first aspect of our resolution, the chapter is divided into two sections. The first—Rights of the House—deals with matters respecting the collectivity of Members, while the second—Rights of Members—pertains to issues affecting individual Members of Parliament. Within these two broad sections, individual decisions are grouped under subject-matter headings.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Misrepresentation of Parliament's role in Government communications respecting the proposed Goods and Services Tax: newspaper advertisements

October 10, 1989

*Debates*, pp. 4457-61

**Context:** *In August 1989, during the summer recess, the Government placed an advertisement in newspapers across the country stating that the proposed new Goods and Services Tax (GST) would come into effect on January 1, 1991. When the session resumed on September 25, 1989, the Rt. Hon. John Turner (Leader of the Opposition) raised a question of privilege relating to the said advertisement. He was of the opinion that by placing newspaper advertisements announcing an effective date for the GST, the Government denied the role of Parliament in the imposition of taxes and thereby prejudiced proceedings in the House and its committees. Other Members also participated in the discussion.<sup>1</sup> On October 10, 1989, the Speaker delivered a ruling which is reproduced in extenso below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** I am now ready to rule on the question of privilege which was raised on September 25 by the right honourable Leader of the Opposition concerning the Government advertisements which appeared in newspapers on August 26 relating to the proposed Goods and Services Tax.

From the very outset, I wish to state emphatically that the Chair has no intention of dealing with the relative merits or limitations of the proposed tax; the Chair has absolutely no role to play in such political matters. The Chair's sole responsibility in this instance is to determine whether the matter raised by the Leader of the Opposition warrants setting aside the regular business of the House.

Citation 84(2) of *Beauchesne's Rules and Forms of the House of Commons*, fifth edition states:

It has often been laid down that the Speaker's function in ruling on a claim of breach of privilege is limited to deciding the formal question, whether the case conforms with the conditions which alone entitle it to take precedence over the notices of motions and Orders of the Day standing on the *Order Paper*; and does not extend to deciding the question of substance, whether a breach of privilege has in fact been committed—a question which can only be decided by the House itself.

I want to again stress that the Speaker does not rule on whether a breach of privilege or a contempt has in fact been committed. The Speaker only determines whether an application based on a claim of contempt or breach of privilege is, on

first impression, of sufficient importance to set aside the regular business of the House and go forward for a decision by the House. That is the narrow point that the Chair must decide.

It might be appropriate to first review some of the facts surrounding the present case. On August 26, 1989, the Department of Finance published in newspapers across the country an advertisement which stated:

On January 1, 1991, Canada's Federal Sales Tax System will change. Please save this notice. It explains the changes and the reasons for them.

I point out that this ad was a full-page ad and the letters were very large indeed.

Let me repeat the wording of the advertisement in French.

*Le 1<sup>er</sup> janvier 1991, le régime de la taxe fédérale de vente connaîtra des modifications. Veuillez conserver cet avis. Il explique les modifications apportées et les raisons qui y président.*

I should point out that in French, then, the ad went perhaps even farther than what was implied in the English.

The advertisement went on to explain that the Goods and Services Tax "will replace the existing federal sales tax" and it outlined very specific proposed changes. It is true that in the ad some of those changes were set out under the heading "Proposed Changes".

In the interventions on September 25, the honourable Member for Parkdale—High Park (Mr. Jesse Flis) pointed out that these ads also appeared in many ethnocultural newspapers across Canada. At the invitation of the honourable Member I examined a number of the newspapers in question, and found that most of these advertisements were published in early September, and that some of them were printed in Italian and Lithuanian.

The honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier), in his intervention, laid stress on the fact that, in the French text, the wording of the advertisement suggests that the changes have already been made or adopted in so much as the ad uses a "*participe passé*" namely the word [*"apportées"*].

In presenting his case for a breach of privilege, the Leader of the Opposition dealt with a number of serious issues. If I may be permitted to summarize his arguments, he makes two basic claims: first, that the advertisement prejudices the future proceedings of the House and of the Finance Committee which has undertaken an examination of a technical paper on the subject; and second, that the advertisement is a contempt of Parliament because it leaves readers to infer that the House has no role in the passage of the tax, thus misleading the Canadian

public concerning the procedures employed by Parliament in adopting such legislation. To quote from the right honourable Member at pages 3809-10 of *Hansard*:

The wording “Please Save This Notice”, followed by chapter and verse of the alleged tax changes, constitutes a basis for a question of privilege.

At least this is the argument of the right honourable Leader of the Opposition. He continued:

Those words “Please Save This Notice” constitute a contempt of Parliament, constitute an intimidation of Parliament, because the only inference to be drawn from the words “Please Save This Notice” is that it does not matter what Members of Parliament do in dealing with these taxes. It does not matter what the Committee on Finance does with respect to these taxes.

He goes on to argue:

These advertisements violate our parliamentary tradition in two more ways. They prejudice the proceedings that are now before the Standing Committee on Finance as well as prejudicing future proceedings of the House itself.

The honourable Member for Oshawa and Leader of the New Democratic Party (Hon. Edward Broadbent) spoke in support of the claims made by the Leader of the Opposition. In addition, he raised the issue of the propriety of a government using public funds to advertise its position on a debate which has yet to be held in Parliament. On this specific point, I would like to immediately refer to the ruling of Speaker Sauvé on October 17, 1980, at page 3781 of *Hansard* and I quote:

“The fact that certain members feel they are disadvantaged by not having the same funds to advertise as does the government, which could possibly be a point of debate, as a matter of impropriety or under any other heading, does not constitute a *prima facie* case of privilege....”

I feel, just as Speaker Sauvé concluded, that this is an important issue which merits consideration, but it should not take place under the aegis of privilege.

To continue with the arguments presented to the Chair on the question of privilege, the Minister of Justice (Hon. Doug Lewis) rose to make three basic points for rejecting this application as a breach of privilege or contempt of the House. He referred to the fact that the Finance Committee itself unanimously recommended that if the government were to proceed with the value-added tax it should publicize the details of that tax. He also explained that in the budget which was approved by the House, the government had indicated that the Goods and Services Tax would be implemented on January 1, 1991. Finally, since the Committee is presently studying the issue, he suggested that no case can be made for the claim that the Committee’s work is being impeded.

The Chair has also considered the arguments made by the honourable Member for Windsor West (Hon. Herb Gray), the honourable Member for Kamloops (Mr. Nelson Riis) and the honourable Member for Peace River (Mr. Albert Cooper), and I would like to thank them for their interventions in this serious matter.

In the present case, the Chair must address a number of issues. I intend to first deal with the issue of whether or not there has been a breach of privilege insofar as the advertisement prejudices the work of the House or the Committee. I will then deal with the claim that the advertisement is a contempt of Parliament because it infers that the House does not have any role to play in the passage of the tax, and that it misrepresents to the Canadian public the procedures employed by Parliament in adopting legislation.

Before proceeding with the first issue, the Chair feels it might be useful to offer Members a short explanation of the difference between what constitutes a contempt of the House and what constitutes a breach of privilege.

The privileges extended to Members individually and to the House as a collectivity are finite. They are generally categorized under five headings which are: freedom of speech, freedom from arrest in civil actions, exemptions from jury duty, exemption from attendance as a witness, and freedom from molestation. As *Erskine May* explains on pages 70 and 71 of the twentieth edition:

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.

As a result, when Members claim that a certain action constitutes a breach of privilege, they must specify which privilege is affected.

Contempts, on the other hand, cannot be enumerated or categorized. As Speaker Sauvé explained in a ruling on October 29, 1980, at page 4214 of *Hansard*:

... while our privileges are defined, contempt of the House has no limits. When new ways are found to interfere with our proceedings, so too will the House, in appropriate cases, be able to find that a contempt of the House has occurred.

Broadly speaking, contempts are offences against the authority or the dignity of the House of Commons. They include situations which cannot specifically be claimed as breaches of the privileges of the House. As noted at pages 71 and 143 of *Erskine May* twentieth edition:

Each House also claims the right to punish actions, which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its Members. Such actions, though often called "breaches of privilege", are more properly distinguished as "contempts".

It goes on:

It would be vain to attempt an enumeration of every act which might be construed into a contempt, the power to punish for contempt being in its nature discretionary.... It may be stated generally that any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.

As already mentioned, it is not possible to categorize or to delineate what may fall under the definition of a contempt. It is not even possible to categorize the "severity" of a contempt. As a procedural authority on the Lok Sabha of India, that is the Indian Parliament, explains in *Practice and Procedure of Parliament* at page 209:

Contempts of Parliament may, however, vary greatly in their nature and their gravity. At one extreme they may consist in little more than vulgar and irresponsible abuse; at the other they may constitute grave attacks undermining the very institution of Parliament itself.<sup>2</sup>

In summary, all breaches of privileges are contempts of the House, but not all contempts are necessarily breaches of privilege. A contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a Member, it merely has to have the tendency to produce such results. Matters ranging from minor breaches of decorum to grave attacks against the authority of Parliament may be considered as contempts.

In the present case, the Leader of the Opposition contends that the advertisement by the Department of Finance prejudices the future proceedings of the House and the Finance Committee.

The Chair must determine which of the specific privileges of the House have been breached.

Certainly, freedom of speech has not been affected. The Committee is continuing its deliberations and the House will no doubt be debating the several issues surrounding the proposed Goods and Services Tax, either through Question Period or on the report of the Finance Committee which will be presented to the House no later than November 28, 1989. The House will also have the opportunity to debate any bills that the government may propose to the House and will also have an opportunity to vote on any Ways and Means motions,

which necessarily precede the introduction of any such bills. The opportunity for debate and amendment are too numerous to list. Suffice it to say that those opportunities have not been diminished.

Now, has the House or have any Members been obstructed in the performance of their duties? In order for an obstruction to take place, there would have had to be some action which prevented the House or Members from attending to their duties, or which cast such serious reflections on a Member that he or she was not able to fulfil his or her responsibilities. I would submit that this is not the case in the present situation.

I would also like to point out that the House and its committees do not work in a vacuum. Members are constantly aware of outside factors and pressures. Since no threats or bribes have been made, it is difficult to see how the work of the House or the Finance Committee has been prejudiced or which specific privilege has been breached.

On this issue, I cannot find that any privilege has been breached.

In the present case, does the advertisement of the Department of Finance amount to a contempt of the House of Commons? The right honourable Leader of the Opposition argues that the advertisement in question is misleading in that it gives the general public the impression that this proposed change to the taxation system is a *fait accompli* and that Parliament has no role to play in examining and approving the changes. The effect of this may tend to diminish the authority of the House in the eyes of the public.

In reply, the Minister of Justice stated and I quote from page 3821 of *Hansard*, and this was the argument of the Minister of Justice:

The ads were for proposed changes. They were for informational purposes. In fact they have done their job and we have hundreds and thousands of requests for information. We are trying to inform the people.

The Justice Minister explains that it was never the Government's intention to suggest that legislation would not be submitted to Parliament for debate. During Question Period on September 25, the Minister of Finance (Hon. Michael Wilson) also stated that the purpose of the ad was to inform, and in keeping with other documents of the spring budget.

Should the Chair accept the Government's explanation and rule that no deliberate contempt was made? At this point it may be useful to quote from a Canadian authority on privilege. As Joseph Maingot explains at page 213 of [the First Edition of] *Parliamentary Privilege in Canada*:

There are actions which, while not directly ... obstructing the House of Commons or the member, nevertheless obstruct the House in the

performance of its functions by diminishing the respect due it. As in the case of a court of law, the House of Commons is entitled to the utmost respect....

Does the advertisement diminish the respect due to the House? The honourable Member for Windsor West put forward the following argument at page 3823 of *Hansard*:

...when this advertisement ... says in effect there will be a new tax on January 1, 1991, ... the advertisement is intended to convey the idea that Parliament has acted on it because that is, I am sure, the ordinary understanding of Canadians about how a tax like this is finally adopted and comes into effect. That being the case, it is clearly a contempt of Parliament because it amounts to a misrepresentation of the role of this House....

The Chair is in a quandary. The arguments on both sides of the question are very strong. To add to the Chair's difficulties, procedural authorities also point out that precedents cannot be relied upon to determine if a contempt exists. In contrast, the Chair can more easily determine when a privilege has been breached because the categories are finite and rulings can be based on precedents and authorities. This case is certainly unique. Analogies can be made to the decision rendered by Speaker Sauvé on October 17, 1980, but at that time the issue centred on the propriety of the Government to advertise in advance of a debate taking place in the House. The issue was not whether the dignity of the House had been affected.

Under these conditions, the Chair feels it must exercise extreme caution against unduly restricting the authority of the House to deal with a perceived contempt, especially given the arguments which have been presented.

I must confess that I have certain doubts regarding this case. Normally in cases of doubt, it has been the practice for Speakers to allow an appropriate motion to go forward for a decision of the House. To this effect, I would like to read from a ruling of Speaker Jerome, found at page 3975 of *Hansard* for March 21, 1978, where he quotes from a report of the United Kingdom Select Committee on Parliamentary Privilege:

... it might be inferred that the test applied by the Speaker in deciding whether to give precedence over the orders of the day to a complaint of breach of privilege ... is, Does the act complained of appear to me at first sight to be a breach of privilege? Rigorously applied, it would mean that no complaint of breach of privilege could ever be entertained unless the Speaker was of opinion that the act or conduct complained of was a breach of privilege....

Borderline cases and arguable ones would be excluded automatically because in such cases the Speaker could not say that he was of opinion that the act or conduct which was the subject of complaint *prima facie* constituted a breach of privilege.

In my submission the question which the Speaker should ask himself ... should be ... has the Member an arguable point? If the Speaker feels any doubt on the question, he should ... leave it to the House.

That is a quote in a judgment by Speaker Jerome citing, I should make it clear, the United Kingdom Select Committee on Parliamentary Privilege.

In order to clarify my thoughts on the issue of *prima facie* and to dispel the doubts that I have referred to, the Chair has pondered the intent of the offending advertisement as compared to its contents. I can express my own opinion that the content was obviously drafted in a cavalier manner; there is an element of confidence, if not of boldness, in the use of a phrase as definitive as “save this ad”.

The Ministers of Justice and of Finance have said to the House that the intent of the ad was to inform Canadians. Members are well aware of our practice of accepting the word of an honourable Member of the House. In accepting the ministers’ explanations, the question of intent is answered and accordingly some of the Chair’s doubts are also dispelled. The intent of the ad was not to diminish the dignity of the House. It is difficult to find *prima facie* contempt.

However, I want the House to understand very clearly that if your Speaker ever has to consider a situation like this again, the Chair will not be as generous. This is a case which, in my opinion, should never recur. I expect the Department of Finance and other departments to study this ruling carefully and remind everyone within the Public Service that we are a parliamentary democracy, not a so-called executive democracy, nor a so-called administrative democracy.

In order that all honourable Members know exactly what the procedure is, and in order that Members of the public who are watching and listening understand clearly what the procedure is, let me return to what I said before, that if I had decided that this matter ought to go to the House, it would be followed, or could be followed, by a debate and a vote.

I believe it is in the interest of our parliamentary system of government to have a clear statement from the Speaker which cannot be misinterpreted either in debate or by a vote. A vote on this issue might not support the very important message which your Speaker wishes to convey and which I hope will be well considered in the future by governments, departmental officials and advertising agencies retained by them. This advertisement may not be a contempt of the House in the narrow confines of a procedural definition, but it is, in my opinion, ill-conceived and it does a great disservice to the great traditions of this place. If we do not preserve these great traditions, our freedoms are at peril and our conventions become a mockery. I insist, and I believe I am supported by the majority of moderate and responsible Members on both sides of the House, that this ad is objectionable and should never be repeated.

I have deliberately made this ruling with great care in order that if ever this issue has to be debated and considered by this House again these comments will serve to guide the House in its deliberations.

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1. *Debates*, September 25, 1989, pp. 3809-29.
2. M.N. Kaul and S.L. Shakdher, *Practice and Procedure of Parliament*, 3rd ed. (New Delhi: Metropolitan Book Co. Pvt. Ltd., rpt. 1986).

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Misrepresentation of Parliament's role in Government communications respecting the proposed Goods and Services Tax: brochures

December 18, 1989

*Debates*, pp. 7058-9

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**Context:** On November 20, 1989, Mr. Peter Milliken (Kingston and the Islands) rose on a question of privilege to complain about certain Government brochures on the proposed Goods and Services Tax (GST) being distributed in his constituency. He argued that the brochures implied that the House had taken a decision on the proposed tax when it had not and that they were, accordingly, in contempt of the House. Furthermore, noting the similarity between the brochures in question and the advertisements which were the subject of a previous question of privilege on which the Chair had ruled on October 10, 1989,<sup>1</sup> he claimed that the continued distribution of the brochures constituted a contempt of the Speaker's decision.<sup>2</sup> The Speaker took the matter under advisement and later in the day heard from the Hon. Michael Wilson (Minister of Finance) and the Hon. Herb Gray (Windsor West).<sup>3</sup> In his decision of December 18, 1989, which is reproduced *in extenso* below, the Speaker dealt with the interventions of all three Members.

### DECISION OF THE CHAIR

**Mr. Speaker:** On November 20, 1989 the honourable Member for Kingston and the Islands raised a question of privilege related to certain pamphlets on the Goods and Services Tax which a constituent of his had informed him were being distributed in a local grocery chain outlet.

In view of the Chair's ruling on October 10, 1989, the honourable Member questioned the propriety of the distribution of the pamphlets. He suggested that this constituted a contempt of the House, pointing out that in the text of the pamphlets the presumption that the GST will be law by January 1991 is everywhere asserted with none of the appropriate references to the legislative process through which the GST must pass.

Later that day, the Minister of Finance rose on a point of order to explain that the pamphlets in question were part of the initial information package prepared by the Department last summer and distributed last August. The Minister assured the House that the distribution contracts for the dissemination of that material had been completed by October and that, subsequent to the Chair's ruling on the advertisements for the GST, steps had been taken to have all offending materials returned to the Department.

The honourable Member for Windsor West intervened to question whether the disputed material was still being distributed.

The Chair undertook to look further into the matter. I have now carefully considered the issue raised by the honourable Member for Kingston and the Islands and the remarks made by the Hon. Minister of Finance. It appears that the point at issue is the timing of the removal of the pamphlets from public distribution.

The Chair is satisfied that the material in question was part of the summer advertising campaign and that given the intricacies of the nation-wide distribution of such material some time delays may have occurred in recovering material from that campaign. The Minister has assured the House that the Department had taken appropriate steps to have the material returned to it and has asked, in light of the complaint raised by the honourable Member for Kingston and the Islands, if Members would bring such aberrant cases to his attention so that corrective action may be taken where required.

In light of this information the Chair is satisfied that the honourable Member's complaint has been fairly and expeditiously dealt with and considers the matter settled. If honourable Members have further information to bring to the Chair, the Chair of course will hear further applications.

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1. *Debates*, October 10, 1989, pp. 4457-61.
2. *Debates*, November 20, 1989, pp. 5823-4.
3. *Debates*, November 20, 1989, pp. 5854-5.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Misrepresentation of Parliament's role in Government communications respecting the proposed Goods and Services Tax: radio advertisement

May 17, 1990

*Debates*, pp. 11559-60

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*Context:* On May 17, 1990, the Speaker indicated he was in receipt of two notices of questions of privilege which seemed to touch upon the same issue. The two Members concerned, Mr. Ron MacDonald (Dartmouth) and Mrs. Diane Marleau (Sudbury), agreed that their questions be heard as one application. They argued that Government-sponsored radio commercials promoting the proposed Goods and Services Tax (GST) were misleading and false and, in view of the Speaker's ruling of October 10, 1989<sup>1</sup> on this subject, constituted a contempt of the House. Other Members also intervened on the matter.<sup>2</sup> Later, on the same day, the Speaker delivered his ruling which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** Earlier today the honourable Member for Dartmouth and the honourable Member for Sudbury rose on a question of privilege to complain about a radio advertisement relating to the Goods and Services Tax legislation now before the Senate.

The honourable Member for Dartmouth very kindly provided for the Chair the transcript of that radio ad, both in French and in English.

For the record, I will read that and it will go into the judgement. The radio ad said:

The proposed Goods and Services Tax will be a tax on the sale of most goods and services in Canada. It is not an additional tax, since it replaces the current federal sales tax.

The GST has three objectives: First, to improve the overall fairness of Canada's tax system. Second, to lower costs so that our products will be more competitive in international markets, and here in Canada. That means more jobs. And finally, to provide a more reliable source of revenue, which will help to reduce the national deficit.

The GST is an important change for Canada. If you'd like more information on how the GST will affect you, call toll-free....

That is the advertisement complained about.

The essence of the argument put forward by the honourable Member for Dartmouth and the honourable Member for Sudbury is that they do not agree that the advertisement I have just read is correct, and both of them indicated that they felt strongly on that issue.

The difficulty the Chair has is that it may very well be that an advertisement, statement, or publication might draw different views from different Members, depending on where they sit in this Chamber, or even from the public. It may be that an advertisement may seem to be very accurate from one person's point of view and less than accurate from somebody else's point of view. But that is, by and large, a question of debate.

I point out that in this particular case the ad does start off with the comment that it is the "proposed Goods and Services Tax". The honourable Member for Dartmouth asked me to consider whether the next words, that is, "will be a tax" in any way denigrate from the opening words, "the proposed Goods and Services Tax". While one might argue the semantics of it, I am inclined to think that it does not in any way take away from the clear intention of the words, "the proposed Goods and Services Tax".

In connection with the substance of the ad—or perhaps I should say the content of the ad, because the substance of it is very much a matter of dispute in this chamber—I find that while there may be disagreement as to the ad, I do not think it is possible for the Chair to find that this ad in any way infringes on the capacity of an honourable Member to do his or her duty as a Member of Parliament. That is the test, of course, which the Chair has to apply in determining whether or not there is a question of privilege.

The honourable Member for Kamloops (Mr. Nelson Riis) eloquently supported the argument of the honourable Member for Dartmouth and the honourable Member for Sudbury. The Minister of National Revenue (Hon. Otto Jelinek) rose and indicated that he was not in entire agreement with some of the arguments that had been put forward with respect to the facts of the general situation surrounding the proposed Goods and Services Tax. At that point, I asked honourable Members to let the Chair consider the matter because, clearly, we were in danger of getting into a debate which went beyond the procedural argument.

As I say, I have heard the arguments. I have reviewed carefully the transcript of the advertisement and brought it to the attention of the House and the public, but my ruling must be that I can find no basis upon which the Chair could make the *prima facie* link with parliamentary privilege or contempt. Honourable Members may wish to dispute the facts or pursue the matter through further debate, as indeed was done today in Question Period, but I cannot, on the evidence submitted, give this complaint consideration as a matter of privilege.

I appreciate the fact that I was well informed in advance and I appreciate also the courtesy and co-operation of all honourable Members throughout the debate.

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1. *Debates*, October 10, 1989, pp. 4457-61.
2. *Debates*, May 17, 1990, pp. 11528-32.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Misleading practices: alleged misuse of the term “parliamentary” to describe a political party’s news service

November 4, 1987

*Debates*, pp. 10725-6

**Context:** On September 22, 1987, Mr. Don Boudria (Glengarry—Prescott—Russell) rose on a question of privilege to protest the alleged misuse of the term “parliamentary” to describe a news service of the Progressive Conservative Party. While conceding that not “all unauthorized usage of the word ‘parliamentary’ is improper,” he maintained that it was improper “to attempt to mislead people into believing something belongs to Parliament when it does not.” He cited instances in which the improper use of the term “Member of Parliament” and the misuse of *Hansard* were found to be in contempt of Parliament and he contended, in keeping with those precedents, “the service of a satellite to broadcast propaganda on behalf of a political party.... under the name of this Parliament ... is in contempt of this House.” Other Members also intervened on the matter.<sup>1</sup> The Speaker reserved and in his ruling of November 4, 1987, reproduced in *extenso* below, addressed the arguments advanced in detail.

### DECISION OF THE CHAIR

**Mr. Speaker:** I shall deal first with the question of privilege of the honourable Member for Glengarry—Prescott—Russell who rose on September 22, 1987.

The issue he raised concerned what he alleged was a misuse of the word “parliamentary” by the service known as the Parliamentary News Service.

In presenting his argument, the honourable Member for Glengarry—Prescott—Russell cited the case from May 6, 1985, where the words “Member of Parliament” were used by other than the currently elected Member for that riding, and the Speaker ruled that a breach of privilege had occurred because the Member could be impeded in fulfilling his duties if confusion existed in the minds of his constituents as to who the Member really was. That particular ruling is of interest, but I have to advise the honourable Member regretfully that I did not find it of assistance in the present case.

Also, the 1983 incident referred to by the honourable Member for Glengarry—Prescott—Russell had to do with a newspaper advertisement which the public could have seen as a quote from *Hansard*, which it was not. The sacred nature of *Hansard* has always been protected, and while the press is at liberty to quote from it, they must do it truthfully rather than try to mislead the public by altering or falsifying the record as published in the *House of Commons Debates*.

A similar case occurred in 1960 when the Sperry and Hutchinson Company reproduced the *Debates* of the House and the Speaker ruled that anything that relates to control by the House, present or future, over its own reports, having the possibility of abuse of such publications in mind—which is easily imaginable—required the Speaker to allow to go forward by finding at least *prima facie* grounds for complaint. This is found in the *Journals* of the House, February 16, 1960, at pages 157 and 158.

In 1965, the Steelworkers Hamilton Council-PAC News used the cover of the *Debates* in its newsletter. The Speaker ruled that there was a *prima facie* case of privilege and based his ruling on the 1960 case.

However, in none of those matters do I find any parallel with the point raised by the honourable Member for Glengarry—Prescott—Russell. All the cases referred to involved deliberate attempts at misleading the public by falsely depicting a document as a quote from *Hansard*. Truly, such is not the case in this instance.

There are a number of previous rulings which dealt with incidents concerning “parliamentary task forces” composed of members from only one Party caucus. In the “Parliamentary Task Force” case of December 10, 1979, the issue revolved around the question of the use of public funds for examinations conducted by Members of one political Party. In the 1980 case, the issue concerned the use of the term “parliamentary task force” for what was essentially a special committee. In the first case, Speaker Jerome stated:

... in my opinion the greater wisdom would be to ensure that in every case ... where public funds are used to support such a committee ... such a committee consist of Members of more than one Party in the House.<sup>2</sup>

As can be seen, these two cases do not directly apply here. There has been no allegation that public funds are involved in the Parliamentary News Service.

The most direct pronouncement on the use of an expression relating to Parliament is found in Statutes. The Act respecting the use of the expression “Parliament Hill” was given Royal Assent on May 19, 1972. The purpose of this Act was to prevent the commercial use of the words “Parliament Hill”.

In the case being raised by the honourable Member for Glengarry—Prescott—Russell, however, the question at issue is whether or not the use of the word “parliamentary” by itself should be restricted in any way by the House.

As the honourable Member for Kamloops—Shuswap (Mr. Nelson Riis) pointed out to the House, the dictionary defines “parliamentary” as “of or relating to Parliament”, and of course “Parliament” is defined as “the Council forming with the Sovereign the supreme legislature consisting of the House of Commons

and the Senate". Therefore, anything describing or relating to either Chamber or the two Chambers together in conjunction with the Queen could be termed "parliamentary".

Does the use of the word "parliamentary" in the Parliamentary News Service not describe the fact that the news covered by the service relates to or concerns Parliament? I think that is true. The news it provides may be, in fact probably is, selected with a view to enhancing a particular perspective. Does this alter the fact that it relates to Parliament? Any newspaper or broadcaster in the country always has been and continues to be free to select those items emanating from Parliament which they believe to be of interest to the public. Because this place is an institution composed of partisan, political people, there are often opposing viewpoints reflecting in its proceedings. I would think there are few Canadians who are not aware of that fact.

The question before me is whether the use of the term "parliamentary", in this instance, is a breach of privilege or some sort of contempt of the House.

Honourable Members all know that privilege is a narrowly defined procedural expression. To quote from *Erskine May's Parliamentary Practice*, it is:

... the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.<sup>3</sup>

Having examined the recorded precedents and studied the substance of the matter raised, I am not convinced that the rights or privileges of any Member have been breached. I have not been convinced either that the dignity of Parliament or the integrity of its proceedings have been compromised by the use of the term ["parliamentary"] in this case. I cannot therefore conclude that this is a genuine question of privilege.

I do feel, however, that a legitimate concern has been raised by the honourable Member for Glengarry—Prescott—Russell. Both the Chair and indeed all honourable Members of the House should be conscious of the need to protect and enhance the reputation of Parliament and of this House and be vigilant in their duty in this regard.

I might say to the honourable Member for Glengarry—Prescott—Russell that sometimes the line between the position he is taking and that which is permissible can indeed be very fine. I would say that to the degree possible, when others are using the word "parliamentary", they might take into account that very fine distinction.

I thank the honourable Member for Glengarry—Prescott—Russell for raising the matter and I also thank all those who participated in the discussion. There is not, however, in the Chair's view, a breach of privilege in this instance.

I might say to the honourable Member for Glengarry—Prescott—Russell that he has probably done the House and the public some service in bringing the matter to the attention of the Chair.

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1. *Debates*, September 22, 1987, pp. 9197-202.
2. *Debates*, December 10, 1979, p. 2181.
3. *May*, 20th ed., p. 70.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Misleading practices: alleged provision of misleading information to the House; Government's White Paper on tax reform

June 30, 1987

*Debates*, p. 7867

**Context:** On June 19, 1987, Mr. Jacques Guilbault (Saint-Jacques) rose on a question of privilege to protest that during the previous day's Question Period "misleading and inaccurate" information pertaining to the Government's White Paper on Tax Reform had been provided to the House by the Prime Minister (Rt. Hon. Brian Mulroney) and the Minister of Finance (Hon. Michael Wilson). Both Ministers, Mr. Guilbault said, had "asserted unequivocally that the tax reform provisions ... were not a budget, but a White Paper." However, he noted, "the announcement of the provisions was in exactly the same form as a budget." It was accompanied by a Ways and Means Motion and had several provisions which would have immediate effect. Mr. Guilbault concluded that "the Members of this House were misled and, as a result, were not adequately prepared to perform their role of responding to the measures tabled by the Minister of Finance." Other Members also participated in the discussion.<sup>1</sup> The Speaker, who had intervened throughout, reserved his judgement and on June 30, 1987 returned to the House to deliver his decision which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I am now ready to rule on the question of privilege raised on Friday, June 19, by the honourable Member for Saint-Jacques. The basis of the honourable Member's complaint is his assertion that misleading information was provided to the House concerning the Government's White Paper on Tax Reform.

The Minister of Finance had stated quite clearly that the White Paper was not a Budget, and that statement was several times reiterated. However, on June 17, the day before the tabling of the White Paper, the Minister said:

It is quite clear that a Ways and Means Motion will be tabled tomorrow evening.

The Rt. Hon. Prime Minister, in answer to a question asked on June 18, confirmed that the White Paper was not a Budget. The Prime Minister's exact words were:

It sets forth the general thrust of government thinking, but it is not a Budget in the sense that it does not, *per se*, take effect the very same day pursuant to a Ways and Means Motion.

The honourable Member for Saint-Jacques pointed out that the White Paper was indeed accompanied by a Ways and Means Motion implementing a number of tax changes.

There is no doubt that the White Paper sets out a very extensive plan of tax reform. Although it is yet to be implemented by a Budget presented in the form of the annual financial statement to which we are accustomed, the White Paper, as I said in a previous ruling, has important budgetary implications. It was, as the honourable Member for Saint-Jacques noted, accompanied by a Ways and Means Motion. However, that motion was not designed to implement the full content of the White Paper. The motion was limited in its effect and I would point out that Ways and Means Motions are regularly tabled throughout the session. They are not restricted to the presentation of a Budget.

For this reason I do not think we can regard the tabling of a Ways and Means Motion as in any way extraordinary simply because it coincided with the Minister's statement and presentation of the White Paper.

It was argued in the course of the discussion that, because of the budgetary implications of the White Paper, it should have been treated as a Budget statement and therefore be subject to a six day debate. The rights of Members, it was argued, have been infringed because they have been denied the debating opportunities normally associated with a Budget. This in itself is not a question of privilege but rather a point of order. However, it is clear that in the view of the Government, the White Paper is a set of proposals as distinct from a Budget. There was no intention of presenting a Budget and therefore under our rules, the claim to a six day debate could not be sustained. However, this would not rule out the possibility of an extended debate through negotiation by the House Leaders.

To return to the question of privilege, the Chair, while appreciating the concern expressed, cannot find any grounds to justify according the complaint precedence over other business. If some honourable Members feel they were misled, they have avenues available to them to pursue their complaints. I would emphasize that it is possible to be misled without being deliberately misled. As honourable Members know, if there were any suggestion of dishonest motivation, which in this case there was not, the only course would be to give notice of a substantive motion setting out the accusation in precise terms. The fact is that we are faced with a political issue on which views are deeply divided. This is not an unusual situation in this House and, unless any action were taken to infringe our right of free debate and free expression, we are not dealing with a matter involving privilege.

To conclude, I think it is fair for the Chair to observe that if one considers the two statements made there is some basis for honourable Members to feel perhaps that the situation was not as clear as they might otherwise have wished it to be. I thank the honourable Member and others for their interventions.

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1. *Debates*, June 19, 1987, pp. 7394-9.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Abuse of Commons' stationery, mailing and franking privileges: alleged misuse of Commons' stationery and franking privileges for partisan political purposes

October 16, 1986

*Debates*, pp. 405-6

**Context:** On October 16, 1986, Mr. Bob Brisco (Kootenay West) rose on a question of privilege regarding the alleged misuse of House of Commons stationery and franking privileges by eight New Democratic Members of Parliament representing British Columbia. He contended that these Members had delivered "a blatantly political message by way of a mass mailing on the B.C. election campaign solely for political gain." Quoting part of the letter, Mr. Brisco claimed it to be an abuse of his privileges "in terms of the proper application and use of stationery and the frank." He was supported in this position by Mr. Ted Schellenberg (Nanaimo—Alberni) who suggested the matter be referred to an appropriate committee. Other Members also intervened on the matter.<sup>1</sup> The Speaker intervened to close off discussion and ruled immediately. His decision is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** The Chair feels that there has been sufficient argument on the point of privilege raised by the honourable Member for Kootenay West and to which the honourable Member for Nanaimo—Alberni spoke. The Chair has been assisted by the interventions from all sides of the House. I am persuaded by the honourable Member for Saint-Jacques (Mr. Jacques Guilbault)—and that argument was supported by the honourable Member for York Centre (Hon. Robert Kaplan)—that the Chair should not move without great care in ruling on whether or not a communication sent under the frank is a question of privilege. However, having said that, I think it is clear that there could be cases where, depending upon the content of the communication sent under the frank, it could be a question of privilege if the content worked against the right of Members to free expression and the carrying out of their obligations as Members.

I have had the opportunity to look carefully at the document in question. It is the view of the Chair—without at the moment commenting on the propriety of sending that particular document, and I want that clearly understood that I am not commenting on that at the moment—that it is not a question of privilege.

The question of propriety, which has been clearly raised as a matter of concern to honourable Members, is properly a matter that ought to be taken up in another place. The Chair has no power to allow a private Member to table the particular document, and the Chair cannot unilaterally refer the matter to whatever committee might be appropriate to do so. That is a matter which

Members can consider among themselves, and there are other means to deal with the issue. Again, I find that it is not a question of privilege. I am not commenting on whether it may very well be an appropriate subject in front of another forum.

I want to thank all honourable Members for their interventions which have been helpful to me. Especially I want to thank the honourable Member for Kootenay West and the honourable Member for Nanaimo—Alberni for bringing notice of this and giving me the opportunity to see in advance the actual document.

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1. *Debates*, October 16, 1986, pp. 402-5.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Abuse of Commons' stationery, mailing and franking privileges: alleged misuse of Commons' stationery by former Member and an American organization

May 17, 1990

*Debates*, pp. 11561-3

**Context:** *On Wednesday, April 18, 1990, an article appeared in The Toronto Star claiming that a letter on House of Commons letterhead and signed by a former Member of Parliament had been distributed to a number of American citizens by a Virginia-based association, English First. The letter allegedly advocated opposition to linguistic duality in support of an effort at a constitutional amendment to make English the official language of the United States.*

*On April 23, 1990, Mr. Don Boudria (Glengarry—Prescott—Russell) rose on a question of privilege to draw the House's attention to the newspaper article and the letter which engendered it. The Speaker and other Members also made remarks on the matter.<sup>1</sup> The Speaker referred to the contributions of all intervenors in his ruling of May 17, 1990, which is reproduced in its entirety below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** On Monday, April 23, 1990, the honourable Member for Glengarry—Prescott—Russell rose on a question of privilege to draw our attention to a letter circulating in the United States which had been the subject of at least one news article in this country.

The letter in question was written by a former honourable Member of this place and bore his signature. The text clearly indicates that the writer is no longer a Member of Parliament. The opening sentence, directed to an American audience, reads:

I bid you greetings from Canada where, for eight years, I served that nation as a Member of Parliament until 1984.

This is followed by the declaration: "I chose to give up my seat in Parliament as a protest". Finally, the signature block refers to the writer as: "Member of Parliament (ret)".

Beyond noting those indications in the text that bear on the fact that the former honourable Member was not misrepresenting his current status, I do not think the Chair should comment at all upon the content of the letter.

When the issue was first raised in the House, the Chair said: "The question is whether or not it is appropriate to send (the letter) out—under the guise of House of Commons stationery", and "The point I have to decide is whether whoever put this out has done something which breaches the privileges of the House".

The writer of the letter who is, as I have said, a former honourable Member of this place, has, in a letter addressed to your Speaker, the House Leader and several other honourable Members, categorically denied sending this letter out on House of Commons stationery. This denial is supported by the statement of the president of the group which claims responsibility for the mailing at issue. According to that statement, the group took the writer's draft, which was on plain white paper, transferred it to a composite made up of two or three samples of parliamentary letterhead, and mailed it in a similar composite envelope.

In our discussions on April 23 last, it was, I think, made clear that our former colleague not only bore no responsibility for the misuse of House of Commons letterhead, but that he took considerable pains to explain his position in this matter to this House at the earliest opportunity. Furthermore, it was, I believe, conceded that this House was in no way misled as to the status of the former Member.

That being so, I must confine my considerations to the question, is this un-sanctioned use of House of Commons letterhead by an American group a serious enough matter to warrant setting aside the regular business of this House?

In this connection, I would remind all honourable Members of the limited function ascribed to the Speaker in ruling on a claim of breach of privilege by citation 84(2) of *Beauchesne's Rules and Forms of the House of Commons*, Fifth Edition. I want also to repeat what I have said so often in the past, that the Speaker does not rule on whether a breach of privilege or a contempt has in fact been committed. The Speaker only determines whether an application based on a claim of contempt or breach of privilege is, on first impression, of sufficient importance to set aside the regular business of the House and go forward for a decision of the House.

The honourable Member for Glengarry—Prescott—Russell, in his remarks, referred me to a decision of May 6, 1985, wherein a former Member of Parliament was identified as a Member in a newspaper advertisement. In that case, the Speaker stated in finding it was a *prima facie* case of privilege, "anything tending to cause confusion as to a Member's identity, creates the possibility of an impediment to the fulfilment of that Member's function".<sup>2</sup>

The Chair also indicated in that case that the only tangible evidence was that provided by the honourable Member who raised the question of privilege. That case is certainly not on all fours with this one, as in this case it was established that there was no confusion as to the identity of the former Member and, further, the former Member established by documentary evidence at the first opportunity that he was not responsible for the misuse of House of Commons stationery.

The honourable Member for Glengarry—Prescott—Russell stated:

The point is that that material, in several thousands of copies, has been distributed to individuals, misleading them to believe that in some way the

House, or a representative of the House, was associated with it. In that way ... the privileges of the House collectively have been affected.

The honourable Minister of State, the Government House Leader (Hon. Harvie Andre), felt that it was obviously unacceptable for anyone to use House of Commons stationery in a fraudulent manner and assert a claim of official status for it. While he asserted that the person responsible for the mailing most certainly had abused the privileges of the House, he queried whether we could enforce those privileges beyond our borders.

The honourable Member for Kamloops (Mr. Nelson Riis), who had also filed notice of his intention to raise this matter, noted that the honourable "Government House Leader said that yes, indeed, he agrees the privileges of the House had been breached".

The honourable Member for Kamloops referred to [the First Edition of Maingot's work *Parliamentary Privilege in Canada* which, at page 195 in the English edition, describes one class of contempt as being the interference with "the corporate rights of the House".

"Surely", the honourable Member for Kamloops continued, "the House of Commons shares the same corporate rights as other corporate bodies, including the important right to claim sole use of our Coat of Arms, stationery, and freedom from the misrepresentation of our views by others".

I listened intently to the views of all honourable Members who spoke on this matter and I have reviewed the facts with a great deal of care. There would appear to be a unanimous sense of outrage directed at the perpetration of this affront. There also appears to be agreement, on all sides of the House, that the privileges of the House, in the broadest sense of that term, have been breached.

The Chair, however must still determine which of the specific privileges of the House have been breached. I must admit that the action complained of does not fit neatly under any of the headings under which the rights and immunities of individual Members or the rights and powers of the House as a collectivity are categorized.

The difficulty in categorizing the purported breach of privilege led the Chair to consider whether perhaps the action at issue was not a breach at all but rather a contempt; broadly speaking, an offence against the authority or the dignity of the House of Commons.

The Chair has found that no breach of privilege exists but that it is at least arguable that there is a contempt at issue. The finding is of little practical significance however, because the next question which the Chair must address, in either case, is the same. That is, is this matter of sufficient importance to be afforded privileged treatment. In other words, should it be put to the House immediately?

Were I to respond to that question in the affirmative the honourable Member who raised the question of privilege would be invited to propose to the House a motion referring the matter to the Privileges and Elections Committee. The motion could then be debated, amended and voted upon. Depending on the outcome of that process, the matter might then be considered by a committee and reappear before the House if and when the committee reported.

It is with a full appreciation of the whole complex process entailed in according privileged treatment to any matter that the Chair must decide whether or not to find a matter is *prima facie* a question of privilege or contempt.

The case at hand involves a misuse of a facsimile of House of Commons stationery in a pathetic attempt, presumably, to lend some sort of official status to the perpetrator's cause. Furthermore, the offence has occurred in the United States where neither the House nor its committees could exercise any authority. The Chair is most reluctant to accord to a case of this nature the importance that would undoubtedly attach to it were I to find a *prima facie* case of contempt and accordingly I refuse to do so.

In concluding my remarks on this matter, the Chair wishes to express its appreciation to the honourable Member for Glengarry—Prescott—Russell, the honourable Member for Kamloops and the Government House Leader for the calibre of their contributions to this discussion. All three performed in the best traditions of the place in focusing on the procedural question involved and in avoiding argument on the content of the letter at issue.

The Chair is most conscious of the restraint exercised in this regard. There is a danger always that under the guise of defending our privilege we would provide a platform for those who espouse opinions repugnant to our own. That danger has been neatly averted in this instance and the Chair is grateful for the co-operation of all honourable Members in this respect.

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1. *Debates*, April 23, 1990, pp. 10522-8.
2. *Debates*, May 6, 1985, p. 4439.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Contempt of the House: American citizen alleged to have knowledge of legislative content of bill prior to its introduction in the House

December 9, 1986

*Debates*, pp. 1903-4

**Context:** On November 21, 1986, Mr. Nelson Riis (Kamloops—Shuswap) rose on a question of privilege to protest the fact that an American citizen allegedly knew the contents of a bill before it was introduced in the House. He based his allegations on the fact that a former president of the U.S. Pharmaceutical Manufacturers Association said in a nationally televised interview taped before the introduction of Bill C-22 (An Act to amend the Patent Act) in the House that he was aware of changes made to the Bill. By means of numerous analogies, Mr. Riis “attempted to relate this as being as serious a breach of privilege as that experienced when a budget leak occurs.” His point, he said, was “that individuals having prior knowledge of the content of the Bill would obviously stand to gain financially and privately because of the implications that this information regarding these companies would have in terms of the value of their stocks on the stock-market or the value of the company operations *per se*.” Other Members also intervened on the matter.<sup>1</sup> The Speaker reserved and returned to the House on December 9, 1986, to deliver his decision which is recorded *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I shall now deal with the matter raised by the honourable Member for Kamloops—Shuswap on November 21. I would first like to express my appreciation of the great care with which the honourable Member presented his complaint and the conscientious research which he undertook in the preparation of his case. This was very helpful to the Chair.

I think it would be useful to reiterate the tests which the Chair must apply to a complaint before declaring that a *prima facie* case of privilege has been established. There are a number of questions which may be applicable depending on the nature of the complaint. Has the freedom of speech of an honourable Member been menaced or called into question? Has an honourable Member been obstructed in any way in the fulfilment of his or her parliamentary duty? Has any attempt been made through bribery or other corrupt means to influence an honourable Member in an improper way? Has an honourable Member been subjected to harassment, threats, abuse, physical violence or any other form of molestation in relation to his or her parliamentary conduct? Has the House as a whole been brought into disrepute through the action complained of? Finally, what evidence exists which might suggest the possibility of an affirmative answer to any of these questions? Obviously the Chair can only find that a *prima facie* case has been established if there is evidence to base it on.

The basis of the complaint of the honourable Member for Kamloops—Shuswap is an allegation that an American citizen, by some means which do not appear to have been established, obtained prior knowledge of the contents of Bill C-22 before its introduction in the House. In the course of his presentation he referred to two United Kingdom precedents and a complaint raised in 1983 by the honourable Member for Yukon (Hon. Erik Nielsen) relating to an incident which took place here in Canada. The cases referred to all concerned budget leaks. The U.K. cases were based on established facts. In one case, the Chancellor of the Exchequer acknowledged that he had committed an indiscretion and resigned. In the other, an investigation established that an impropriety had occurred and a Minister resigned in consequence. Incidentally, neither of these cases was dealt with by way of a question of privilege. In the Canadian case, Madam Speaker Sauvé found that there was no basis for a question of privilege. Budget secrecy was a matter of convention and not a matter for the determination of the Chair.

To return to the case before us, the Chair must first determine what the facts are and, second, whether those facts constitute evidence of a *prima facie* case of privilege. The honourable Member's case is based on certain comments made by a former President of the United States Pharmaceutical Manufacturers Association in the course of a television interview. The honourable Member made it clear that he was not implying that the Minister of Consumer and Corporate Affairs (Hon. Harvie Andre) had revealed the contents of the Bill to the gentleman in question; and the Minister himself stated emphatically that while various consultations had taken place he had at no time been in contact with anyone in the United States. It therefore seems to the Chair that incontrovertible facts are lacking.

I must also make reference to the contribution of the honourable Member for Windsor West (Hon. Herb Gray) who suggested that under our new Standing Order 1, the Chair is no longer bound by established precedents relating to matters of privilege and that, to quote his own words, it is open to the Chair: "to extend the definition of privilege to new areas". It is important, though, that we do not confuse privilege with procedure. In matters of procedure, the new Standing Order 1 possibly enlarges the scope of the House in determining procedure in unprovided cases. The limits of privilege, though, are laid down by statute. It is not open to the Chair to extend the definition of privilege. This could only be done by legislation and would involve an amendment to the Constitution. I must therefore rule that no facts have been presented on which a *prima facie* case of privilege could be based.

I think it is appropriate for the Chair to remind all honourable Members that these kinds of incidents do cause grave concern among honourable Members and I believe it is a good reason why extra special care should be taken, especially by Ministers, to ensure that matters that ought properly to be brought to the House do not in any way get out in the public domain and cause concern to honourable Members and often to Ministers as well.

I want to thank all honourable Members who participated in the debate [...] and I hope the comments that I made will be helpful to all honourable Members. I thank them.

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1. *Debates*, November 21, 1986, pp. 1405-12.

**PARLIAMENTARY PRIVILEGE**

Rights of the House

Contempt of the House: disturbance in the gallery

April 11 and 27, 1990

*Debates*, pp. 10488, 10760

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*Context:* On April 10, 1990, a recorded division was held on the third reading of Bill C-62 concerning the Goods and Services Tax (GST). Immediately after the announcement of the result of the vote, two visitors seated in the Opposition Gallery disrupted proceedings by creating a disturbance and throwing papers onto the floor of the Chamber in protest of the passage of the Bill. The following day, Mr. Albert Cooper (Parliamentary Secretary to the Government House Leader) rose on a question of privilege regarding the incident. Mr. Cooper asserted that the House cannot do its work, or maintain essential dignity, if “strangers” disrupt proceedings in an abusive way. He concluded that in this case both a *prima facie* breach of privilege and a *prima facie* contempt had occurred. Furthermore, he questioned whether Mr. Jim Karygiannis (Scarborough—Agincourt) who had provided the two visitors with signed cards admitting them to the Gallery had prior knowledge of their intentions and suggested that the broadcast testimony of one of the protestors respecting his intentions indicated that Mr. Karygiannis “owes the House at least an explanation, then an apology and ... an appearance before the Standing Committee on Privileges and Elections.” Mr. Jean-Robert Gauthier (Ottawa—Vanier) informed the House that, in his capacity as Whip of the Official Opposition, he had spoken to Mr. Karygiannis who denied any knowledge that the persons to whom he issued passes were going to cause a disturbance. Mr. Gauthier asked the Speaker to reserve judgment until Mr. Karygiannis who was not present that day had the opportunity to make a statement to the House. Other Members also commented generally on the nature of the security measures used to screen visitors to both the public and Members’ galleries and the implications of the incident on future security considerations.<sup>1</sup> The Speaker made a statement immediately. The substance of the statement is recorded below together with some points of clarification given by Mr. Karygiannis.

**RESOLUTION**

**Mr. Speaker:** ... The incident that happened is not amusing. I think that especially for the public watching this particular exchange it does little credit to anybody in this country to use whatever subterfuge they can to come into this place, which is symbolic of our democracies, our freedoms and our liberties, and abuse them.

The incident that happened, so far as the person involved in this incident is concerned, is of course absolutely inexcusable. It was not brave. It was cowardly and sneaky. It goes against everything we believe in.

The honourable Member for Ottawa—Vanier has raised an absolutely legitimate point, and it was commented upon further by the honourable Member for Esquimalt—Juan de Fuca (Mr. David Barrett).

With respect to procedure, the fact of the matter is that under our rules, if it is a question of privilege or contempt of the House, there is an obligation that it be raised at the first opportunity. The honourable Parliamentary Secretary has followed that. However, the honourable Member for Ottawa—Vanier, who has been very frank with us all has made a suggestion, which has been especially confirmed now by the honourable House Leader of the Government (Hon. Harvie Andre), that this matter should be stood down until the honourable Member whose passes apparently were used has a chance to speak to the Chamber.

I am very conscious of the fact that the honourable Member for Ottawa—Vanier as House Leader of the Official Opposition<sup>2</sup> had contacted the honourable Member. He has stood up in this House and said that the honourable Member said that he did not know that this was going to happen. That is there in front of us, but I think it is appropriate that we invite our colleague to address us further in the matter.

Again, I say, because ultimately I am responsible for the security in this place, that I am deeply disturbed that this could happen.

I say to any other Canadians who think it is smart to pull a stunt like this, that while they break the law they abuse their privileges. If they are ever in trouble, they will be calling on all of us to protect them very rapidly.

*On April 27, 1990, the incident came to a conclusion. The resolution of the issue is reproduced below.*

**Mr. Jim Karygiannis (Scarborough—Agincourt):** Mr. Speaker, during the last sitting of the House before Easter recess on April 11 it was suggested that I had some prior knowledge of a disturbance in the gallery after the recording of the GST vote on April 10.

To clarify this matter, I would like to say that passes were handed out by my office but that neither I nor my staff had any prior knowledge of what the two young men had planned to do.

While I may understand their frustration with the GST, the way in which they expressed their dissatisfaction is totally unacceptable to me. I do not condone and totally dissociate myself from this kind of action.

**Some Hon. Members:** Hear, hear!

**Mr. Speaker:** I want to thank the honourable Member and I think that the response to this statement indicates the appreciation of the House.<sup>3</sup>

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1. *Debates*, April 10, 1990, pp. 10485-9.
2. During this period, Mr. Gauthier served as both Opposition House Leader and Opposition Whip for the Liberal Party. See *Debates*, April 10, 1990, pp. 10485, 10488.
3. *Debates*, April 27, 1990, p. 10760.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Contempt of the House: disturbance in the gallery; Member's complicity—*prima facie*

November 6, 1990

*Debates*, pp. 15177-81

**Context:** In the Fall of 1990, the Government announced a new policy of imposing a three per cent surcharge on student loans to discourage defaults. During Question Period on October 17, 1990, National Students' Day, as Mr. Howard McCurdy (Windsor—St. Clair) was putting a question to the Ministry on this surcharge, students from the University of Ottawa, seated in the north gallery, disturbed the proceedings by throwing objects (uncooked macaroni and protest cards) onto the floor of the Chamber.

Once order had been restored, the Speaker suggested that Mr. McCurdy take the opportunity in his supplementary to dissociate himself from the protestors. Mr. McCurdy did. Immediately after Question Period, the Speaker apologized for his comment and stated that he had not intended to imply that the Member was involved in the protest. Shortly after Question Period, Ms. Audrey McLaughlin (Leader of the New Democratic Party) rose on a point of order to protest the attacks on the New Democratic Party caucus by members of the Government and asked the Hon. Don Mazankowski (Deputy Prime Minister, President of the Privy Council and Minister of Agriculture) to retract the comments of Progressive Conservative Members. The Speaker took the matter under advisement and called upon Members to maintain as much dignity and civility as possible.<sup>1</sup>

On the following day, October 18, 1990, Mr. Albert Cooper (Parliamentary Secretary to the Government House Leader) rose on a question of privilege to argue that the event of the previous day constituted a contempt of the House and that Mr. McCurdy had been "an accessory to this contempt against our Parliament." He contended that Mr. McCurdy and others had prior knowledge of the demonstration, yet, did not attempt to stop it. He offered what he maintained was sufficient evidence for the Speaker to rule that a *prima facie* case existed and stated that he was prepared to move the appropriate motion should the Speaker so find. Mr. McCurdy denied that he, the House Leader of the New Democratic Party, or any member of the NDP caucus had any prior knowledge that such a demonstration was to take place. Furthermore, he concluded that Mr. Cooper should be held in contempt for making such "contemptible accusations."

The Speaker heard further argument from several other Members before closing off the discussion and reserving on the matter.<sup>2</sup>

*On November 6, 1990, the Speaker returned to the House to deliver the ruling. This ruling is reproduced in extenso below together with supplementary comments from the Speaker and excerpts of a committee report tabled on the matter.*

### DECISION OF THE CHAIR

**Mr. Speaker:** During Question Period on Wednesday, October 17, there was a demonstration in the gallery which occasioned a number of heated exchanges. The Chair undertook to consider carefully what had been said and to come back to the House and report if it were appropriate to do so.

On the following day, Thursday, October 18, the honourable Member for Peace River, the Parliamentary Secretary to the Leader of the Government in the House of Commons, rose on a question of privilege, in his own words:

... specifically to argue that certain Members of the New Democratic Party participated in an action which demonstrated a clear contempt against yourself personally and this House generally.

The honourable Parliamentary Secretary then proceeded to charge that since the honourable Member for Windsor—St. Clair knew of the demonstration, and did nothing to stop it, he was in fact an accessory to the contempt. He laid several items before the House and indicated that should the Chair conclude that this matter should be accorded privilege treatment, he was prepared to move the following motion:

That the entire matter of the demonstration held in the public gallery on Wednesday, October 17, 1990, during Question Period, and the *prima facie* evidence that the honourable Member for Windsor—St. Clair had prior knowledge of this demonstration be referred to the Standing Committee on Privileges and Elections.

The Chair has had the opportunity to reflect at some length on this matter and has found it convenient to organize its thoughts about three aspects of the matter. First, the disturbance itself is a prime concern and it is one which the Chair should like to pursue a little later on in these remarks, in order to focus initially on the more immediate concerns of whether there was involvement by a Member or Members of this House in the perpetration of this unacceptable demonstration and if so whether the conduct of an honourable Member may be brought into question by means of a question of privilege.

At the outset the Chair would like to make it very clear what is to be decided here. In ruling on a question of privilege the Chair does not ultimately decide upon the matter. The Chair can only decide whether, on the basis of the material presented to the House, it appears likely that there has been a breach of privilege, which is so grievous that we set aside all other business before this House to consider the alleged breach. To be more specific, in this particular instance, the

Chair must be satisfied that from the evidence presented it is reasonable to conclude that the honourable Member for Windsor—St. Clair had in some way participated in or aided in some manner the offensive demonstration.

The honourable Parliamentary Secretary has presented to this House what he described as *prima facie* evidence. There were, I believe, five pieces of such evidence. Perhaps it would be advantageous to consider what *prima facie* evidence is. *Black's Law Dictionary*, Fifth Edition, at page 1071 defines *prima facie* evidence as “evidence which suffices for the proof of a particular fact until contradicted and overcome by other evidence”. Although the sufficiency of the evidence put forward was the subject of some comment during our discussion of the question of privilege, it does not appear necessary to delve further into that aspect because in any event it has been denied or explained or challenged and the Chair is of the opinion that those denials and explanations outweigh the evidence submitted which is largely circumstantial.

There is a time honoured tradition in this place that we accept an honourable Member's word.

The honourable Member for Humber—St. Barbe—Baie Verte (Mr. Brian Tobin) in his intervention in this discussion described that tradition of accepting an honourable Member's word “as primary and essential to the functioning of this place” and cautioned that “if we depart from that we will be in very great difficulty in this place”. The Chair is indebted to the honourable Member for Humber—St. Barbe—Baie Verte for that turn of phrase and for the reasoning developed in his intervention.

In response to the Parliamentary Secretary's accusation that he had prior knowledge of the demonstration, the honourable Member for Windsor—St. Clair categorically denied that he or any member of his caucus was informed or was aware of it. He was supported in this by several members of his caucus. Even were he not, even were he to have stood alone, we in the House are bound to accept the honourable Member's word—such is the nature of our institution that a Member's word is paramount—and we lose sight of that at our peril.

To my mind, this aspect of the affair was concluded with the denial of the accusation by the honourable Member for Windsor—St. Clair. Accordingly, I cannot find that there is any question of privilege which should be put to the House in respect of that matter.

Accordingly, it would not be appropriate to allow the Parliamentary Secretary to put to the House, as a privileged motion, that portion of his proposed motion that relates to the prior knowledge of the demonstration.

I should like now to turn to the demonstration itself and to a consideration of the propriety of raising that matter as a question of privilege. As I said last Thursday, I listened with some comfort to representations from some Members regarding the respect which we need to have for this place and which other people

ought to have for it. I am pleased to accede to the suggestion of the honourable Member for Saint-Denis (Mr. Marcel Prud'homme) that the Chair, at an appropriate time, remind us of what this House is all about and reinforce the seriousness of the disturbance which took place in our galleries. The honourable Member for Saint-Denis, a devotee of parliamentary tradition, has a well-developed sense of the House and its changing moods and tenors and I sincerely welcome his well-considered advice.

I also understand and share the fear expressed by the hon. Minister of State and Leader of the Government in the House (Hon. Harvie Andre) that the disturbance in our galleries might be seen as a legitimate form of political dissent and is an indication of the disrespect in which the perpetrators held this institution. Those who would safeguard their rights must be ever vigilant to insidious encroachments thereupon.

In the past, the House has usually chosen to ignore those who offended its dignity by interrupting proceedings because it was reluctant to inadvertently advertise their causes. Maingot, in [the First Edition of] *Parliamentary Privilege in Canada*, notes at page 203:

All kinds of misconduct in the presence of the House or of a committee may be treated as contempts on the ground that they partake of an affront to the dignity of the House....

Misconduct or misbehaviour in the traditional sense would include acts that disrupt or have a tendency to disrupt or interrupt the House or committees by such acts as shouting, throwing objects, waving placards.... Many instances have occurred where disorderly conduct has taken place, even to the extent of temporarily suspending the House, but the general position of the House is that the dignity of the House would be best served by taking no action in such cases.... The House is reluctant to take action against those attempting to disrupt the proceedings in this way because of the attendant publicity it would provide them.

Perhaps the time has come to re-examine our practice in this regard. If so, that is for the House to decide. What the Chair must decide at this point is whether the motion put forward by the honourable Parliamentary Secretary, now stripped as it is of any reference to prior knowledge of the demonstration, is to be accorded privileged treatment.

Were I to decide that the question should be put to the House immediately, then the honourable Parliamentary Secretary would be invited to put his revised motion referring the matter of the demonstration in the galleries to the privileges and elections committee. The motion could then be debated, amended, and voted upon. Depending on the outcome of that process, it might then be considered by a committee and reappear before the House if and when the committee reported.

If the Chair appears to belabour the point, it is simply to insist upon the potential complexity and length of the process initiated by the characterization of a question of privilege as *prima facie*.

The Chair states clearly that it would have very little difficulty in characterizing the revised motion as privileged, yet the Chair is reluctant to unleash the consequences of that decision. At this stage I wonder if I could prevail upon the honourable Parliamentary Secretary to consider, in view of the deletion of part of the proposed motion, whether he wishes to proceed with this matter as a privileged item at this time.

I would ask the honourable Parliamentary Secretary if he would help the Chair in that regard.

**Mr. Cooper:** Mr. Speaker, I have no problem at all in accepting the ruling that you have made today or the word of the honourable Member for Windsor—St. Clair. It also would be my intention, as I understand it, to go ahead with the amended motion. I do not have a problem with that, if I am sure I have the right words.

**Mr. Speaker:** I take it the honourable Parliamentary Secretary has accepted completely the words of the honourable Member for Windsor—St. Clair, and that is the honourable Parliamentary Secretary's declaration to this House. The honourable Parliamentary Secretary wishes to move the motion.

*The motion was immediately put and adopted without debate. Accordingly, it was ordered, that the entire matter of the demonstration held in the public gallery on Wednesday, October 17, 1990, during Question Period be referred to the Standing Committee on Privileges and Elections.*

*At that point, Mr. McCurdy rose to complain that although the ruling had dealt with the behaviour of the students, it had not addressed the issue of one Member bringing charges of contempt against another Member. He argued that by making false allegations in the House, Mr. Cooper was in contempt of the House. He and Mr. Nelson Riis (Kamloops) both urged Mr. Cooper to apologize and to withdraw his remarks. In response, Mr. Cooper stated that at the time he made the remarks he believed them to be true; therefore, he could not deny them. The Speaker quickly intervened to inform Mr. McCurdy that if he wished to debate that specific matter further, he should find an appropriate forum in which to do so.<sup>3</sup>*

*This exchange was concluded with the following words from the Chair:*

**Mr. Speaker:** ... The honourable Member has heard the judgment of the Chair which, as far as I am concerned, completely absolves the honourable Member from any of the accusations, whatever they may have been, that were made. There can be no doubt about that. The honourable Member and other honourable Members have a chance to reflect on the exact wording of my judgment. The honourable Parliamentary Secretary has said he accepts that completely.

If the honourable Member wishes to have the honourable Parliamentary Secretary say something more, there may be a procedure in which he can raise it, but the Chair cannot order the honourable Parliamentary Secretary to do more at the moment than he has done.

The Parliamentary Secretary has said that when he made those accusations, however unfounded they may have turned out to be, he did not do it dishonestly. The honourable Member for Windsor—St. Clair now says that he lied. That is a very serious allegation and, if the honourable Member for Windsor—St. Clair wants to pursue it, he will have to pursue it according to the rules and at another time.

The essence of this was that there was a demonstration, which in my view, *prima facie*, is a contempt of this House. It was an argument about who might have known about it and who might have prevented it. That argument, while of course serious, and especially serious to the honourable Member for Windsor—St. Clair, and I understand that, is important and I am not diminishing the importance of it. I do not think the argument at the moment should take precedence over the fact that these kinds of demonstrations which some people in this country think are perfectly legitimate, are absolutely not legitimate. That is the fundamental point that has to be made.

*Postscript: The Standing Committee on Privileges and Elections to which the matter of the demonstration was referred reported to the House on Wednesday, March 6, 1991. The concluding paragraph of the Twenty-Fourth Report presented a concise summary of the Committee's response:*<sup>4</sup>

*The Committee does not recommend that any specific action be taken with respect to the participants in the infamous "macaroni" caper of October 17, 1990; however, the Committee recommends that any demonstrations or disturbances that take place in the galleries in the future should be taken very seriously, and the participants punished or charged. It is very important that the message be clearly conveyed that the House will not tolerate such behaviour.*

*No motion was presented for concurrence in the Committee report.*

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1. *Debates*, October 17, 1990, pp. 14276-81.

2. *Debates*, October 18, 1990, pp. 14359-68.

3. *Debates*, November 6, 1990, pp. 15179-81.

4. *Minutes of Proceedings and Evidence of the Standing Committee on Privileges and Elections*, March 7, 1991, Issue No. 39, p. 8.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Contempt of the House; Member attempting to grab the Mace—*prima facie*—called to the Bar of the House

October 31, 1991

*Debates*, pp. 4309-10

**Context:** On October 30, 1991, following the daily adjournment of the House at approximately 8:10 p.m., Mr. Ian Waddell (Port Moody—Coquitlam) ran down the centre aisle of the Chamber and touched the Mace which was being borne on the shoulder of the Sergeant-at-Arms who was preparing to lead the procession out of the House. The incident delayed the progress of the procession momentarily.

Upon the opening of the next day's sitting, on October 31, 1991, Mr. Jesse Flis (Parkdale—High Park) rose on a question of privilege regarding the actions of Mr. Waddell. He argued that, through his actions, Mr. Waddell had debased the decorum of the House, contravened the Standing Orders and challenged and shown contempt for the authority of the Chair by abusing the Mace which is the symbol of the House's authority. Mr. Flis concluded his remarks by presenting the following motion:

Whereas the honourable Member for Port Moody—Coquitlam by his actions on October 30, 1991, at approximately 8:10 p.m. did show contempt to the authority of the Canadian Parliament, and

Whereas there appears to be a *prima facie* case that a breach of privilege has been committed, and

Whereas this matter is being raised at the earliest opportunity, I move that the Member for Port Moody—Coquitlam appear at the Bar of the House.

Other Members intervened to support Mr. Flis' submission.

Mr. Waddell then rose to give an explanation of the previous night's events and apologized for his actions admitting they had been inexcusable. However, he indicated that he had not intended to show disrespect of, or contempt for, the Chair or the House. The Member contended that he was simply upset because he had been unable to vote on a Private Members' motion and felt he had been cut off by the Acting Speaker (Mr. Charles DeBlois) in explaining his case before the House.

Mr. Nelson Riis (Kamloops) then intervened to apologize on behalf of the New Democratic Party caucus and to suggest, as an alternative form of action, that the Speaker name the Member.

The Speaker stated that while there was clearly a *prima facie* case of privilege, he would need time to review and clarify exactly what the practice had been regarding a motion to bring a Member to the Bar of the House.

*It was agreed that the House would proceed with Routine Proceedings and then suspend the sitting until the Chair was prepared to rule on the matter.<sup>1</sup>*

*When the proceedings of the House resumed, the Speaker stated that, in consultation with Mr. Flis, the motion had been changed. Mr. Flis presented the modified motion which read:*

*That the honourable Member for Port Moody—Coquitlam be called to the Bar of the House and be admonished by the Speaker.*

*The Speaker then reiterated that there were no doubt in his mind this event constituted a prima facie case of contempt. The motion was put to the House for debate. A number of Members participated in the debate. Following debate, the motion was agreed to and Mr. Waddell was ordered to appear at the Bar of the House at three o'clock that afternoon.<sup>2</sup>*

*Following Question Period that day, at three o'clock, the Speaker directed the Member for Port Moody—Coquitlam to proceed to the Bar of the House. As directed by the House, the Speaker then delivered the reprimand which is reproduced in extenso below.*

#### STATEMENT OF THE CHAIR

**Mr. Speaker:** Mr. Waddell, you stand at the Bar of the House because your peers have decided that the conduct you displayed in the House on Wednesday, October 30, 1991 offended the privileges of the House of Commons of Canada.

Just before adjournment and shortly after eight o'clock p.m. you were given the floor on a point of order. After your intervention the Deputy Speaker made a ruling on your point of order and proceeded to adjourn the House in conformity with the Standing Orders whereupon you left your seat in breach of our conventions, interfered with the Sergeant-at-Arms, an officer of the House, and you physically attempted to prevent the Mace from leaving the Chamber.

The Sergeant-at-Arms is a servant of this House and acts under the authority of the Speaker. The Mace is the symbol which embodies not only the authority of the House but its privileges as well.

The special privileges that Members of the House of Commons enjoy are part of the constitutional law of Canada. Freedom of speech is one of the most revered of these privileges. However, with that privilege comes the responsibility to use it wisely and for the good of Canada.

It is not a licence to say whatever one wishes under all circumstances, or permission to disregard the rules of the House or the common practices of civility.

There is little doubt that the incident of last evening is one which all Members regret. In your statement to the House earlier you expressed your personal regret and apologized to the House.

Nevertheless because of the seriousness of your action the House has chosen to agree to the motion directing me to reprimand you. You have been duly elected a Member of this House. It is incumbent upon you to represent your constituents and to fulfil your duties and obligations as a Member. In honouring those onerous obligations it is essential that you always respect this institution and its rules and practices.

The House of Commons can only function when its dignity is upheld by all Members and its rules followed. That you disregarded the rules and practices of this place and the authority of the Speaker is a matter of grave concern to this House and to all who cherish and respect this institution.

As Speaker of the House, and upon its instructions, I therefore reprimand you as guilty of a breach of privilege and of a gross contempt of the House.

The honourable Member may retake his seat.

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1. *Debates*, October 31, 1991, pp. 4271-8.
2. *Debates*, October 31, 1991, pp. 4279-85.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

The House of Commons and Statutory Law: application of *Official Languages Act* to Parliament

March 17, 1987

*Debates*, pp. 4262-3

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*Context:* On February 19, 1987, Mr. Charles Hamelin (Charlevoix) rose on a question of privilege regarding the application of the *Official Languages Act* to Parliament. Citing four legal opinions drafted by Law Clerks of the Senate and the House of Commons which all concluded that the *Official Languages Act* does not apply to Parliament, he declared himself “ashamed of the fact that the law still fails to recognize the basic right to linguistic duality in Canada” and noted that as a Co-Chairman of the Standing Joint Committee on Official Languages, he found it “uncomfortable” to remonstrate with federal institutions, agencies and departments while Parliament itself was exempt from, or above, the law. In conclusion, he noted that he was relying on the Speaker and the Government to correct this “monstrous anomaly” as soon as possible. Other Members also intervened on the matter.<sup>1</sup> The Speaker reserved his judgment and, on March 17, 1987, returned to the House to present the ruling which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On February 19, 1987, the honourable Member for Charlevoix rose on a question of privilege concerning the application or lack of application of the *Official Languages Act* to Parliament, in particular to the House of Commons.

May I begin by stating that the function of the Speaker is to preside over the House of Commons and to decide upon procedural questions whether they be interpretations of the Standing Orders or matters relating to privilege or order.

What the honourable Member for Charlevoix raised on February 19, 1987, is, I submit, not a procedural question but a question of legal interpretation. The extent of the application of any law is a question that the courts should be asked to decide and not the Speaker. The honourable Member quoted several legal opinions when raising his question, which adds emphasis to my point that this is a legal matter, not a procedural one.

*Beauchesne* 5th Edition, [page 38, Citation 117(6)] states: “The Speaker will not give a decision upon a constitutional question nor decide a question of law”. The reason for this is obvious. A court may very well have to rule on the same question of law someday and clearly a court would not be bound by a Speaker’s interpretation of the general or constitutional law of the land. The Speaker’s duty is confined to interpreting the procedures and practices of the House of Commons.

In his presentation the honourable Member for Charlevoix did not establish how his privilege had been infringed by the application or lack thereof of this law. In other words, the fundamental right to speak freely in the House of Commons has not been abridged.

The honourable Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council [Mr. Doug Lewis] pointed out that Section 133 of the *Constitution Act, 1867*, states:

Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada ... and both those Languages shall be used in the respective Records and Journals of those Houses;

It goes on to say:

The Acts of the Parliament of Canada ... shall be printed and published in both those Languages.

The honourable Parliamentary Secretary read those sections to the Chamber during the intervention. In addition, the honourable Member for St. Jacques [Mr. Jacques Guilbault] stated:

It is ironic that the application of the Official Languages Act to the House of Commons is being debated, because certainly this is the most bilingual of all federal institutions.

I concur totally with the honourable Member for St. Jacques on this point.

Whether the *Official Languages Act* applies to the House of Commons in law or not, clearly and unequivocally, the intent of the Act is being applied. Let me briefly expand on this point.

As most honourable Members will know, the Commissioner of Official Languages regularly conducts studies of federal institutions to determine the degree to which they apply the *Official Languages Act*. Such studies have regularly been done of the House of Commons. Indeed, the Chair has recently met personally with the Commissioner to discuss whether activities in the House of Commons are, in fact, adequately conforming to the spirit of the Official Languages Act.

In his most recent audit of the House dated June 1986, the Commissioner of Official Languages stated:

“The linguistic situation at the House of Commons has improved significantly since our earlier audit in 1979. In a relatively short time, the House Administration has successfully carried out an ambitious program of reform. The program’s most notable achievement has been to make the face of Parliament bilingual by rendering all public signs, including engravings in stone on the historic buildings, in both official languages.

The House of Commons' official languages program is complete and forms an integral part of managers' administrative responsibilities."

He went on to state:

"Service to the public is available and spontaneously offered in both languages with few exceptions since a good proportion of House employees are bilingual.... English and French are both widely used as languages of work at the House...."<sup>2</sup>

It should be clear from Mr. D'Iberville Fortier's report that the intent of the law is indeed being followed.

Several honourable Members who participated in the debate on this question pointed out that all House documents are published in both languages, debates are held in both languages, and simultaneous translation is provided in both the House and in committees. Every care is taken to ensure that all honourable Members are served in the House in their language of choice and can participate fully in either or both languages. If it were demonstrated that this was not the case in a particular circumstance, then the Chair might be required to intervene, but this is not the point that the honourable Member for Charlevoix is making in this situation.

From a procedural point of view, the contention of the honourable Member for Charlevoix that if the *Official Languages Act* does not apply to the House of Commons his privilege is infringed, is clearly not founded in precedent or practice. Whether or not the Act applies is a legal issue which the courts should decide, not the Speaker. It is clear, however, that Section 133 of the *Constitution Act* is applied and it is clear that the practices of the House adhere to the intent of the *Official Languages Act*. The second point, that privilege has been infringed if the Act does not apply, has not been demonstrated. Because of the *Constitution Act*, and because of the way the House operates, all honourable Members are assured of their right to participate in debate in their language of choice.

Whether the application of the *Official Languages Act* should be clarified, or whether or not this Act should be amended or revised, is a question for the House to address and not for the Speaker to dictate.

I thank the honourable Member for Charlevoix for raising this extremely important issue and I also wish to thank all those who participated, for their useful commentary.

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1. *Debates*, February 19, 1987, pp. 3617-22.

2. Office of the Commissioner of Official Languages, *Administration of the House of Commons*, June 1986, pp. 3-4.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

The House of Commons and Statutory Law: failure to table document as required by statute; role of Speaker

February 5, 1992

*Debates*, pp. 6425-7

**Context:** On February 3, 1992, Mr. Derek Lee (Scarborough—Rouge River) rose on a question of privilege regarding “the failure of the Minister of Finance to lay before Parliament an order made pursuant to section 59(2) of the *Customs Tariff*.” In his presentation, copy of which was submitted to the Speaker and several other Members, Mr. Lee made the argument that the failure to abide by statutory tabling requirements involves a contempt of the House. This was so, he maintained, because the omission shows a lack of respect for Parliament, a persistent disregard for the law made by Parliament and could impede or obstruct Members in the discharge of their functions. Mr. Lee also observed that the matter of tabling or not was a question of fact to be determined—it was not a question of law. Furthermore, he noted that the House of Commons was the only appropriate forum which could fashion a remedy for a breach of “the right ... to have a copy of the order tabled in the House for the information of Members and for review by one of its Committees.” Other Members also intervened on the matter.<sup>1</sup> The Speaker took the matter under advisement and returned to the House on February 5, 1992 to deliver the ruling which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I have a judgment to give on a question of privilege.

I would like to advise all honourable Members that I am now ready to rule on a question of privilege raised on Monday the 3rd of February by the honourable Member for Scarborough—Rouge River concerning the failure of the Minister of Finance (Hon. Michael Wilson) to table an Order in Council pursuant to section 59(5) of the *Customs Tariff*. The Chair has reviewed this serious issue and thanks the honourable Member for his succinct explanation of the case.

As I said during the statement, I would also like to thank the Parliamentary Secretary to Deputy Prime Minister and Minister of Finance (Mr. Pierre Vincent) and the honourable Member for Okanagan—Similkameen—Merritt (Mr. Jack Whittaker) for their interventions.

In his presentation, the honourable Member for Scarborough—Rouge River correctly pointed out that the *Customs Tariff* required that an Order in Council respecting the elimination of tariffs on certain plywood and related products under the free trade agreement be tabled in the House of Commons by the Minister of Finance on April 21, 1989 at the latest. This Order in Council was finally tabled on December 12, 1991, some 32 months later. The honourable Member did note, however, that this document was registered and published in

the *Canada Gazette* of January 18, 1989, thus being placed in the public domain. He also stated that he was confident that the Minister's failure to comply with the law was not intentional. The basis of his complaint was that the non-observance of a legal obligation established for the collective benefit of Members of the House amounts to a contempt of the House. Summarizing his argument the honourable Member asked:

In short, does the omission to table a document legally required to be tabled, impede or obstruct the House and its members in the discharge of their functions or does it have the tendency to do so?

This is the question directed to the Chair.

The first point that the Chair wishes to highlight is that Speakers do not interpret or enforce matters of statutory law. There are many precedents to this effect.

On June 19, 1978, a question of privilege was raised respecting the late tabling of the Postmaster General's annual report. In rejecting claims that the failure to respect the law constituted a breach of privilege, Speaker Jerome warned the House that the authority of the Chair did not extend to the determination of questions of law.<sup>2</sup>

On two occasions—March 27, 1981 and February 10, 1983—Speaker Sauvé confirmed this principle in denying claims for the Chair to intervene in cases similar to the one raised by the honourable Member for Scarborough—Rouge River. In each of these situations, the Government had failed to live up to its statutory responsibility to table documents within a specific period of time. In response, Madam Speaker ruled that the Chair had neither the responsibility to interpret the law nor the authority to compel the Government to obey it.<sup>3</sup>

These precedents served to highlight the restrictive nature of the Chair's authority with respect to legal questions. However, while the matter raised on Monday may stem from a statutory requirement, the main thrust of the issue is not of a legal nature, but rather a procedural one. As the honourable Member for Scarborough—Rouge River so aptly stated, "This is a question of fact rather than a question of law". In the manner of his presentation, the situation is different from earlier cases.

Another key element raised by the honourable Member relates to the failure of Government officials to act on demands for the tabling of this Order in Council. As he explained in his submission:

It is far too common for public servants to treat tabling requirements as a matter of little or no consequence with the result that over the years, Members of this House have repeatedly had to raise the issue of non-compliance with such requirements. The failure of the minister's officials to advise him of his obligations is all the more inexcusable in this case in that the non-tabling of the order was drawn to the attention of an assistant

deputy minister in the minister's department in a letter from one of the counsel to the joint committee for the scrutiny of regulations dated May 8, 1989. Officials of the same department were reminded of this on subsequent occasions prior to December 12, 1991.

That is all a quote from the honourable Member but I think it very clearly puts his case.

Therefore, in light of the notices given to the Department and its failure to comply with the letter of the law, the honourable Member claims that a contempt of the House has occurred and that this case should be dealt with as an offence against the authority and dignity of the House.

The Chair wishes to address some other remarks of the honourable Member for Scarborough—Rouge River. The Member stated that the purpose of tabling documents in the House "is to require documents to be laid before it in instances where it determines that the formal transmission of a document is necessary for Members of Parliament to properly discharge their responsibility of holding the executive accountable for its actions." Tabling either by the "front door" or the "back door", whether at the discretion of a minister or because of a legal requirement, is an action of the House and as such it is recorded in the *Votes and Proceedings*, the official record of the decisions of the House.

It is through tabling that Members are officially apprised of the existence of a document. Thus when we include in legislation provisions for tabling, it is not done lightly but is done for a serious purpose.

The tabling of documents, as specified in our rules, is one of the procedures on which hinges the ability of Members to discharge their functions. In particular, with the reform of the rules in 1982, all reports, returns and papers to be laid before the House in accordance with the requirements of the statute are automatically referred to a standing committee pursuant to Standing Order 32(5). Thus, a failure to table any required document has the effect of impeding such committees from carrying out their mandate "to examine and enquire into all such matters as may be referred to them by the House" as stipulated by Standing Order 108(1).

Our capacity as elected representatives is to be ever vigilant and to protect the interests of our electors. The statutory laws which are in force, those which have been adopted by Parliament as a whole, are meant to be respected and serve no purpose if they are ignored. To quote the honourable Member for Scarborough—Rouge River, "a right which cannot be enforced is no right at all". The fundamental question that remains to be answered is whether the Standing Committee on External Affairs and International Trade has been interfered with because it had to wait 32 months before being formally seized of the Order in Council.

The Chair has reflected seriously upon this matter. I have examined very carefully the circumstances surrounding this particular case and the argument presented by the honourable Member for Scarborough—Rouge River. I note that the honourable Member stated that the correspondence in question has been between counsel for the Standing Joint Committee for the Scrutiny of Regulations and officials from the Department of Finance. It appears that the matter relating to the punctual tabling of these types of Orders in Council lies more appropriately with the Committee, at least at the present time. If the Committee senses that a contempt has occurred it is within its power to report this fact to the House. Once the House is in receipt of such a report, it can take appropriate action.

Until the Committee has reported on this matter, it could be argued that the House should not be dealing with the particular circumstances of this case. It may be that the Committee is in the process of taking some action or that it is contemplating doing so in the future.

In the view of the Chair, this would be an appropriate way of dealing with this matter for the moment, since the Committee has already initiated work in this area and may want to continue their review of this matter. As a result of their work, the Committee may want to report to the House recommending an action for the House to take or it might want to report on what it sees as a contempt, at which time the matter may once again come before the House. Without the benefit of the Committee's view on this whole matter, I am reluctant to rule that *prima facie* a contempt of the House exists at this time.

I wish to add, however, a cautionary comment. Since 1985 Standing Order 32(5) was amended to read as follows:

Reports, returns or other papers laid before the House in accordance with an Act of Parliament shall thereupon be deemed to have been permanently referred to the appropriate standing committee.

I have to say—I think I probably speak for the House—those responsible to meet any deadlines for the tabling of documents in the House of Commons provided for in the Statutes of Canada should reflect carefully about the possible consequences of any delay. I thank honourable Members for their assistance in this matter.

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1. *Debates*, February 3, 1992, pp. 6289-93.
2. *Debates*, June 19, 1978, pp. 6525-6.
3. *Debates*, March 27, 1981, pp. 8716-7; February 10, 1983, p. 22714.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

The House of Commons and Statutory Law: failure to table document as required by statute—*prima facie*

April 19, 1993

*Debates*, pp. 18104-6

**Context:** On February 24, 1993, Mr. Derek Lee (Scarborough—Rouge River) rose on a question of privilege regarding “the failure of the Minister of Finance to lay before Parliament an order made pursuant to subsection 59(2) of the *Customs Tariff*,” which was by subsection 59(5) of the same act required “to be laid before Parliament on any of the first 15 days after the making thereof that either House of Parliament is sitting.” Mr. Lee noted that one year earlier he had raised a similar question of privilege concerning the late tabling of an order required by statute to be tabled by a certain date. He then informed the House of the adoption by the Governor in Council on December 29, 1992 of Order in Council P.C. 1992-2715, which revoked the order referred to in his earlier question of privilege on February 3, 1992. He claimed that this revocation order should have been laid before Parliament by February 15, 1993, that it was not and that this omission amounted to a contempt of the House.

While indicating that it was not his intention to repeat at length the arguments he had presented in his earlier question of privilege, Mr. Lee requested that the Speaker take them into consideration. He emphasized that he was not rising “in any capacity other than that of a Member of Parliament seeking to uphold the collective right of this House to have a copy of any order made pursuant to subsection 59(2) of the *Customs Tariff* laid before it.” He expressed his belief that the Minister of Finance had not intentionally disobeyed the statutory tabling requirement, but indicated that intention was not relevant to a finding of contempt and submitted that “the Minister’s failure to table a document required to be tabled ... whether intentional or accidental, tends to diminish the authority of the House of Commons and is something that might reasonably be held to constitute contempt by this House.” Referring to the Speaker’s ruling of February 5, 1992,<sup>1</sup> on this issue, he remarked that departmental officials appeared to have ignored the caution delivered by the Speaker regarding adherence to tabling requirements but noted that under the doctrine of ministerial responsibility the Minister is accountable to the House for the acts or omissions of officials. In conclusion, Mr. Lee indicated that he was prepared to move an appropriate motion should the Speaker find a *prima facie* case of privilege. The Deputy Prime Minister and Minister of Finance (Hon. Don Mazankowski) indicated that he would look into the matter and report back to the House.<sup>2</sup>

On the following day, February 25, 1993, Mr. Charles Langlois (Parliamentary Secretary to the Minister of State and Leader of the Government in the House of Commons) tabled Order in Council P.C. 1992-2715, which was the subject of Mr. Lee’s question of privilege.<sup>3</sup>

*The Speaker, having reserved on the matter, delivered his ruling, which is reproduced below, on April 19, 1993. At the same time, the Speaker dealt with the issue of Government non-compliance with deadlines for responses to Committee reports.<sup>4</sup>*

### DECISION OF THE CHAIR

**Mr. Speaker:** ... I would like to advise all honourable Members that I am now ready to rule on the question of privilege raised on Wednesday, February 24 by the honourable Member for Scarborough—Rouge River regarding the failure of the Minister of Finance to table an Order in Council pursuant to section 59(5) of the *Customs Tariff*.

Regrettably this issue is not new to this House, having been raised by the honourable Member just over a year ago. I would like to thank the honourable Member for bringing this matter to the attention of the House again and the Deputy Prime Minister and Minister of Finance for the response.

I will deal as well in this ruling with the question of privilege raised on March 29, 1993 by the honourable Member for Winnipeg South Centre (Hon. Lloyd Axworthy) concerning the late tabling of Government response to a committee report from the Standing Committee on External Affairs and International Trade.

In presenting his claim for breach of privilege the honourable Member for Scarborough—Rouge River explained that on December 29, 1992, pursuant to section 59(2) of the *Customs Tariff*, the Governor in Council adopted Order in Council 1992-2715.

The honourable Member's question of privilege concerned section 59(5) of the *Customs Tariff* which explicitly states: "The Minister of Finance shall cause a copy of any order made pursuant to subsection (2) to be [laid] before Parliament on any of the first fifteen days after the making thereof that either House of Parliament is sitting".

Pursuant to this statute, the order referred to by the honourable Member should have been tabled on or before February 15, 1993. However as the honourable Member noted, the Minister of Finance failed to do so.

For the information of all Members I would like to note that the document cited was tabled subsequent to the question of privilege being raised on February 25, 1993. Nonetheless, this eventual tabling of the order does not correct the situation or resolve the fundamental problem.

Let me begin by saying that I find this situation particularly disheartening because of the striking resemblance it bears to the situation which gave rise to the question of privilege raised a year ago. In both cases the Minister of Finance was required by section 59(5) of the *Customs Tariff* to table an Order in Council within a prescribed time.

I am not making any of these comments in any personal sense and Members will understand that but there are people in departments who know these rules and are supposed to ensure they are carried out.

In both of these cases the government failed to do so until after the matter was brought to the attention of this House.

The key element of the question of privilege raised by the honourable Member for Scarborough—Rouge River is based on a statutory requirement. That is, the Ministry was legally obliged to table a copy of an order made by the Governor in Council within a time limit determined by the *Customs Tariff*.

I find it necessary to also repeat the honourable Member's statement of one year ago that, and I quote the honourable Member: "It is difficult to conceive of any command of this House that could have more legitimacy [than] one contained in a law passed by this House".

As the honourable Member succinctly stated when this very issue was raised in February 1992: "Subsection 59(5) of the *Customs Tariff* is a statutory provision and statutes are the highest form of command that can be given by this House. In my view, the disregard of that legislative command, even if unintentional, is an affront to the authority and dignity of Parliament as a whole and of this House in particular".<sup>5</sup>

It is an opinion that I share and that I expect to prevail in this Chamber. The statutory laws which have been agreed to by Members of this House do serve a purpose and are meant to be respected.

As a servant of the House of Commons it is my duty to uphold the dignity and authority of this place. It is an obligation of the Speaker with, of course, the support of the Members. At the very beginning of a Parliament every Speaker addresses the Crown as represented by the Governor General, by claiming all the rights and privileges, in particular that Members may have freedom of speech in their debates, access to His Excellency's person at all seasonable times and that their proceedings may receive from His Excellency the most favourable construction.

In the present case it is not merely an order of the House that has been violated, but a law duly assented to by the Crown as a constituent part of Parliament. The delegate of the Crown has not met the exigencies of the law of Parliament.

As I have said before, Canada is not an executive democracy nor an administrative democracy, but a parliamentary democracy. If the Speaker has to remind the Crown [formally] at the opening of every Parliament then those who serve it should take note.

As Members are well aware, the tabling of documents constitutes a fundamental procedure of this House. It is a part of our rules and ensures that Members have access to the information necessary to them to effectively deal with the issues before Parliament.

In addition, as I mentioned a year ago, the rules of the House specify that all reports, returns and papers to be laid before the House in accordance with the requirements of the statute are automatically referred to a standing committee, pursuant to Standing Order 32(5). Consequently, ministers and departmental officials must ensure that required documents are tabled so the House has a copy for the information of Members and for review by one of its committees.

The requirements contained in our rules and statutory laws have been agreed upon by this House and constitute an agreement which I think all of us realize must be respected.

There has been a growing number of complaints raised by Members in the past year about responses to petitions not being filed within the required time and answers to written questions being answered late. I understand that we live in an imperfect world. Nonetheless, what I refer to is all on the record and today I am dealing yet again with a document not being tabled within the legally prescribed time period.

In addition, the Member for Winnipeg South Centre raised the issue on March 29, 1993 that the Government was in breach of Standing Order 109 by not presenting the comprehensive response to the report of the Standing Committee on External Affairs and International Trade on the future of Canadian military goods, production and export to the House within the 150 days required.

Members cannot function if they do not have access to the material they need for their work and if our rules are being ignored and even statutory instruments are being disregarded.

I believe the House management committee should be given the opportunity to look into this whole question of late tablings. I am therefore prepared to find a *prima facie* case of breach of privilege and allow the honourable Member for Scarborough—Rouge River to move a motion referring this matter to committee.

In this way I am allowing the House to decide whether or not it shares my concern about the growing severity of this problem. The House may then decide whether or not it feels the House Management Committee should be tasked with considering the issue.

*Postscript: The motion was immediately put and adopted without debate. Accordingly, it was ordered that the matter of the non-observance of the tabling requirements for Order in Council P.C. 1992-2715 and other documents in the House of Commons be referred to the Standing Committee on House Management.*

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*The Standing Committee on House Management in its One Hundred and First Report deemed to have been laid on the Table on June 17, 1993, after reviewing the facts, stated in its last four substantial paragraphs:*

*The Speaker's ruling clearly sets out the issues involved. There are provisions in the Standing Orders of the House as well as many statutes passed by the House that require documents to be tabled in the House within certain time periods. Non-compliance with a deadline set out in a statute or the Standing Orders is a serious matter. It constitutes a breach of a law, or of a rule of the House.*

*The Committee believes that the statutory and procedural time limits must be complied with. If a document cannot be tabled within the prescribed time, the responsible Minister should advise the House accordingly before the deadline; it is not acceptable that the deadline is ignored.*

*It may be that the time periods set out in the Standing Orders and certain statutes need to be reviewed and, where necessary amended. Until this is done, however, it is essential that the deadlines be respected.*

*With respect to the specific issue raised by Mr. Lee, the Committee believes that further study of the matter should be considered. In particular, we would like to hear from witnesses who can shed some light on the late tabling of Order in Council 1992-2715.<sup>6</sup>*

*No motion for concurrence in the report was presented. The House adjourned on June 23, 1993 which was the last sitting day of the 34th Parliament.*

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1. This ruling can be found in the present section.
2. *Debates*, February 24, 1993, pp. 16393-4.
3. *Debates*, February 25, 1993, pp. 16433-4.
4. That matter is considered in the section respecting Committees.
5. *Debates*, February 3, 1992, p. 6290.
6. *Journals*, September 8, 1993, p. 3338.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

The House of Commons and officials: actions of Commissioner appointed under the *Canada Elections Act*

January 28, 1988

*Debates*, p. 12360

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*Context:* On September 25, 1985, the Hon. Marcel Masse (Frontenac) resigned as Minister of Communications when he was informed that he was the subject of an inquiry concerning an alleged violation of the *Canada Elections Act* during the 1984 election campaign in the riding of Frontenac.<sup>1</sup> Mr. Masse was reappointed to Cabinet on November 30, 1985, at the conclusion of the investigation, and was subsequently appointed as Minister of Energy, Mines and Resources on January 30, 1986.

In January of 1988, there was public disclosure of a personal and confidential letter written on November 28, 1985, more precisely at the conclusion of the investigation into Mr. Masse's election expenses. The letter was addressed to Mr. Masse and signed by Mr. Joseph Gorman, the Commissioner of Canada Elections.

On January 25, 1988, Mr. Nelson Riis (Kamloops—Shuswap) rose on a question of privilege ensuing from the content of the letter. He indicated that, in the letter, Mr. Gorman stated that the Minister had participated in an infraction of the *Canada Elections Act* in relation to the payments of campaign expenses but that he was not going to lay charges against him. Mr. Riis questioned the actions of Mr. Gorman and his decision not to prosecute Mr. Masse. Noting that charges had been laid against persons close to the Minister and that the Minister had been exempted from such charges, Mr. Riis mentioned that this led to a view "that there are two standards of justice in Canada, one that applies to Cabinet Ministers and the other that applies to every other ordinary Canadian citizen." He argued that the decision constituted a contempt of the House in that it hindered Members in their tasks as Parliamentarians. Mr. Riis concluded his remarks by indicating that should the Speaker find a *prima facie* case of privilege, he was prepared to move the appropriate motion for referral to the Standing Committee on Elections, Privileges and Procedure. Other Members also intervened on the matter.<sup>2</sup> The Speaker took the matter under advisement and returned to the House on January 28, 1988 to deliver the ruling reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Monday, January 25, the honourable Member for Kamloops—Shuswap raised a matter relating to the actions of the former Commissioner of Canada Elections, Mr. Joseph Gorman, in rendering a decision after an investigation into alleged breaches of the *Canada Elections Act* by the honourable Member for Frontenac.

The honourable Member for Kamloops—Shuswap argued that the decision of the Commissioner not to charge the Minister “diminished the public’s respect for the House of Commons and for Members of Parliament” and, further, that this failure to charge was contempt of this House.

Let me first refresh honourable Members’ memories about the provisions of the Standing Orders of the House on the required notice.

Standing Order 20(2) clearly provides as follows:

... any Member proposing to raise a question of privilege, other than one arising out of proceedings in the Chamber during the course of a sitting, shall give to the Speaker a written statement of the question at least one hour prior to raising the question in the House.

Former Speakers have been clear on this. The purpose of the rule is to save the time of the House so that the Speaker, in advance, can look into the situation or matter being brought forward. The notice should be complete enough so that the Chair is as fully informed as possible of the matters to be raised.

With respect to the issue brought forward on January 25 by the honourable Member for Kamloops—Shuswap, when some time was obviously taken to prepare the arguments in advance of raising them in the House, the notice could have been given earlier and could perhaps have been more explicit. I merely caution all Members in this respect, and I do so in the interest of the good functioning of our proceedings.

I come now to the specific issue dealing with the actions of the former commissioner, Mr. Gorman. While he is not an officer of Parliament in the usual sense of that expression, he is an official who is appointed by, and reports to, the Chief Electoral Officer who is an officer of Parliament. Mr. Gorman was appointed Commissioner of Canada Elections under Section 70 subsection (3) of the *Canada Elections Act*. Under subsection (4) of Section 70 the commissioner is given certain authority, namely, the power to give or withhold consent to prosecution under that Act. The House of Commons, indeed, Parliament gave him that authority.

In the argument presented in the House, it was clear that Mr. Gorman was exercising powers given to him under the Act. The exercising of powers given to an official under an Act cannot be a matter for the Speaker to rule on unless there are circumstances which amount to a breach of privilege or a contempt of Parliament. In this case there is nothing before the Chair to support a claim of breach of privilege or contempt. Thus, there is no role for the Speaker in this case.

I would remind the House that it is not the duty of the Speaker to judge the actions of public officials in the fulfilment of their duties. It is my duty only to determine whether or not sufficient evidence has been presented to judge if there has been a *prima facie* breach of privilege or a contempt of the House. In this case, I do not find that either has occurred.

During Question Period in the past several days the suggestion has been made that the Standing Committee on Elections, Privileges and Procedure should look into this matter. As all honourable Members know, standing committees now have permanent orders of reference. In the case of the privileges Committee, the process followed by the Chief Electoral Officer and his officials, in particular, the Commissioner of Canada Elections, could be looked into by the Committee. However, only the Committee can decide to look at this matter. It is a decision for the Committee to take, it is not one for the Speaker.

I would caution Members that no charge of misconduct has been laid against any public official or any Member of the House in this case. The committees powers are limited to studying and reporting on matters relating to the process and procedure under the relevant statute. Again, this is a decision for the committee to make, but my reading of the statute did not discover any provision for review by, or appeal to, a committee of this House of the decisions or specific cases made by an electoral commissioner. Having said that, the committee should not be shy of reviewing the process and procedures that Parliament has enacted.

This is an important question to which the House has devoted a lot of time during the oral question period. However, with all due respect, I cannot conclude that a case has been made for the Chair to rule that the actions or omissions of the former commissioner constitute contempt of the House or a breach of privilege.

Let me close by thanking the honourable Member for Kamloops—Shuswap, the Minister of State (Hon. Doug Lewis) and the Parliamentary Secretary to the President of the Privy Council (Mr. Jim Hawkes) for their contributions.

*Postscript: Immediately following the Speaker's ruling, the Hon. Doug Lewis rose on a point of order. He indicated that the Government was willing to have the Standing Committee on Elections, Privileges and Procedure "examine the mandate of the commissioner and the decision-making process." Mr. Rod Murphy (Churchill) for the New Democratic Party and the Hon. Herb Gray (Windsor West) for the Official Opposition welcomed this announcement. Mr. Gray, however, warned that even should the committee study the matter, the Official Opposition would continue to raise the issue during Question Period. The Speaker concluded the exchange by stating that "provided the questions are appropriate, the ruling in itself does not preclude them."<sup>3</sup>*

*The Standing Committee on Elections, Privileges and Procedure examined the issue of the role and the authority of the Commissioner of Canada Elections in its Eighth Report tabled on March 8, 1988.<sup>4</sup> The Committee found, inter alia, that*

*Mr. Gorman did not deviate from the pattern followed in previous investigations of that nature.*

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1. *Debates*, September 25, 1985, p. 6963.
2. *Debates*, January 25, 1988, pp. 12246-9.
3. *Debates*, January 28, 1988, pp. 12360-1.
4. *Journals*, March 8, 1988, p. 2264.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

The House of Commons and officials: alleged interference with Members' duties by an official of Federal Business Development Bank withholding documents

December 19, 1989

*Debates*, pp. 7202-3

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*Context:* On November 3, 1989, the Hon. Robert Kaplan (York Centre), after obtaining the unanimous consent of the House to waive the usual one hour's notice provision, rose on a question of privilege to complain of the actions of an official of the Federal Business Development Bank, who withheld certain documents from him despite a prior commitment by the Bank to provide the material. Mr. Don Boudria (Glengarry—Prescott—Russell) also spoke to the issue.<sup>1</sup> Their remarks are summarized in the Speaker's decision of December 19, 1989 which is reproduced in extenso below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Friday, November 3, the honourable Member from York Centre sought to obtain the unanimous consent of the House in order to raise a question of privilege at the outset of the sitting without having submitted written notice.

The substance of the question had to do with what the honourable Member for York Centre characterized as the deliberate interference by an official of the Federal Business Development Bank with the delivery of documents which the Bank had agreed to provide. He indicated that he wanted these documents in order to turn them over to the RCMP. In anticipation of their receipt, he had arranged a meeting with RCMP people in his office on the Thursday afternoon. As it happened, the documents were not turned over to the honourable Member for this meeting.

The honourable Member from Glengarry—Prescott—Russell supported the question of privilege and explained that the material requested from the bank was in the public domain, as these documents had already been given to *The Montreal Gazette*. He went on to state that the failure of the bank to deliver the documents in the time previously arranged prevented the honourable Member from York Centre from turning them over to the RCMP. Both Members asserted that the decision to withhold the documents by an Ottawa official of the bank interfered with the rights and obligations of that Member to fulfil his responsibilities as a Member of Parliament.

At the same time, however, the honourable Member for Glengarry—Prescott—Russell explained that the Federal Business Development Bank subsequently agreed to release the documents.

It would therefore appear that the question of privilege relates to a delay in the delivery of documents to the honourable Member for York Centre which prevented him from keeping his appointment with the RCMP as originally planned. While the Member may have been inconvenienced, it is difficult for the Chair to be convinced that this constitutes a question of privilege.

While there was a delay, it does not seem to be clear that the honourable Member was hindered in the performance of his duties. Inconvenienced perhaps, but not interfered with.

I might also add that even though it was claimed that the documents were in the public domain, it appears to me that, in fact, these documents remained the property of the bank. If by virtue of an internal decision or mix-up, and I do not want to suggest motives, the documents were not delivered when the Member from York Centre had expected them, it seems to me that it is a matter to be resolved between the Member and the bank.

As it happens, the bank has agreed to release the documents and that agreement was evidently made before this question of privilege was raised here. The matter, therefore, would appear to be resolved.

I thank the honourable Member for bringing the matter to the attention of the House.

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1. *Debates*, November 3, 1989, pp. 5511-2.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Matters touching upon the Chair: chairing of Progressive Conservative Party Convention by the Deputy Speaker

March 9, 1993

*Debates*, p. 16685

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**Context:** On March 8, 1993, Mr. David Dingwall (House Leader of the Official Opposition) rose on a question of privilege concerning an announcement that the Deputy Speaker (Hon. Andrée Champagne) would be the co-chair of the upcoming Progressive Conservative Leadership Convention. The Opposition House Leader suggested that the office of Deputy Speaker was not compatible with such a role at a political party convention and contended that by accepting this role “the honourable Member has shown contempt for her responsibilities as an officer of the House.” Other Members also intervened on the matter.<sup>1</sup> The Speaker, having clarified the fact that Members were not making a personal attack nor criticizing the manner in which the Deputy Speaker fulfilled her duties in the House, reserved on the matter. On the following day, the Speaker delivered the ruling which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** Yesterday the honourable House Leader of Her Majesty’s Loyal Opposition rose on a question of privilege claiming that the Deputy Speaker, the honourable Member for Saint-Hyacinthe—Bagot was guilty of a contempt of the House for accepting to co-chair the Progressive Conservative leadership convention in June 1993.

Normally the Chair would not allow comment on the conduct of a Chair occupant to come before the House in such a manner. There is a formal and well-established procedure whereby Chair occupants can be censured. I allowed the discussion because the honourable Member insisted on proceeding forthwith and pointed out, as subsequently also did the honourable Member for Mission—Coquitlam (Ms. Joy Langan), that the Deputy Speaker’s performance in the House was above any reproach and was not in question.

I have had an opportunity to review the comments honourable Members have made and I wish to thank all those who sought to assist the Chair in this most delicate issue.

I have reviewed the procedural authorities and have found much comment on the role and impartiality of the Speaker but regretfully very little on the Deputy Speaker. Practice and conventions vary greatly throughout the Commonwealth. In Canada, Deputy Speakers invariably, during majority governments, are chosen from the ruling party on motion made by the Prime Minister. They remain members of their political party, may attend caucus if they choose and may even participate in debate.

They can, and often have, voted on controversial government proposals. Some Deputy Speakers have chosen not to attend caucus and/or have refrained from voting in the House. The current incumbent has done just that, voting only twice since assuming the role of Deputy Speaker, on the abortion legislation, which I point out was a free vote, and on the question for the 1992 referendum. It is no doubt such exemplary conduct that led to the generous comments made about her by all Members who participated in yesterday's discussion.

In the context of the Canadian practice, and in the absence of specific direction of the House, Deputy Speakers have exercised their discretion to varying degrees. I have some difficulty in agreeing with the honourable Member for Cape Breton—East Richmond (Mr. David Dingwall), that the Deputy Speaker is cloaked with the same exigencies that are expected of the Speaker himself or herself, and I am deliberately careful in not extending such a responsibility by way of *ex cathedra* comments in this decision. I have no hesitation in ruling, however, that the matter as raised by the honourable Member does not constitute a *prima facie* case of privilege.

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1. *Debates*, March 8, 1993, pp. 16577-81.

## PARLIAMENTARY PRIVILEGE

### Rights of the House

Matters touching upon the Chair: comments challenging the integrity and impartiality of a Presiding Officer—Assistant Deputy Chairman of Committees of the Whole—*prima facie*

March 23, 1993

*Debates*, pp. 17404-5

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**Context:** On March 16, 1993, Mr. Gilles Bernier (Beauce) rose on a question of privilege regarding comments allegedly made by Mr. Benoît Tremblay (Rosemont) in reference to Mr. Charles DeBlois (Montmorency—Beauport—Orléans), the Assistant Deputy Chairman of Committees of the Whole. The remarks had been made at a public meeting and were published in the March 14, 1993 edition of the weekly Beaupré-Express. It was reported that Mr. Tremblay had said that: “Charles DeBlois, one of the acting speakers of the House, is a party to collusion to restrict our party’s right to speak in Ottawa.” Mr. Bernier argued that Mr. Tremblay should withdraw and apologize for casting doubts on the integrity and impartiality of the Speakership. The Speaker advised that as Mr. Tremblay was not present in the Chamber, the appropriate course of action would be for the Speaker to meet with Mr. Tremblay, after which time the matter could be pursued in the House.<sup>1</sup>

On March 23, 1993, the Speaker advised the House that after a number of discussions, he felt it appropriate to recognize the Member for Rosemont. Mr. Tremblay said that the sentence quoted in the newspaper article was reported out of context. He added that he had also said at the meeting in question that by accepting the appointment as Deputy Chairman, Mr. DeBlois “had put himself in a position where he had to apply rules that did not recognize the Bloc québécois, with the approval of the traditional parties here in this House.” With respect to his use of the term “collusion” in the impugned quote, Mr. Tremblay conceded that since “collusion” connotes an element of secrecy, perhaps he should have used the word “coalition” instead. Mr. Don Boudria (Glengarry—Prescott—Russell) and Mr. Bernier both intervened to take issue with Mr. Tremblay’s statement. In light of the latter’s refusal to withdraw the offensive remarks, Mr. Bernier presented to the House the text of the motion for referral of the matter to Committee which he was prepared to move should the Speaker find a *prima facie* question of privilege. Other Members also intervened on the matter.<sup>2</sup> The Speaker ruled immediately and his ruling is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** This is, of course, a rather difficult situation, not only for the Speaker and the honourable Member, but also for the House.

I listened carefully to what was said by the honourable Member for Rosemont. He may have given some explanation of the circumstances in which he made the comments that were quoted in the paper in question.

However, I have some difficulty with the facts, because clearly, if we consider only what was quoted in the newspaper, those words are, in my opinion, unacceptable to this House. If we consider the words that were reported, we clearly have a *prima facie* case that affects the dignity of this House and our colleague, because our colleague is an officer of this House. As the honourable Member for Glengarry—Prescott—Russell said earlier, like the Speaker he is an officer of this House, and an attack against the integrity of a person in that position is an attack against this House.

As I said before, I listened to the comments of the honourable Member for Rosemont, and I assume the crux of the problem is the position of the Bloc in this House. I realize that there have been ongoing complaints by some Members of the Bloc québécois about their status as a party in this House.

However, all Members, and the public as well, must realize the decision on the status of Members of the Bloc québécois was not made by the Speaker or by our colleague.

If the honourable Member for Rosemont would accept this distinction and perhaps be willing to withdraw this morning the comments he made in referring to the Speaker—and as the Speaker of this House I am his Speaker as well—we would accept that.

However, in the circumstances, I think that for the sake of relations between Bloc québécois Members and the other Members of this House, it would be entirely appropriate to withdraw altogether the comments reported in the paper.

If there is a withdrawal, it would be preferable to make it here. I therefore suggest that the honourable Member for Rosemont consider the Chair's comments and perhaps, after a moment's reflection, he will wish to withdraw entirely the comments that were quoted in the paper.

*Mr. Tremblay argued right after that he had made it quite clear that he did not blame the Speaker for the decision not to recognize the Bloc québécois. He added that he did not accept that Mr. DeBlois had knowingly chosen to accept the position of Deputy Assistant Chairman without being aware that would mean applying rules which did not allow for the recognition of the Bloc québécois.<sup>3</sup> The Speaker then continued:*

**Mr. Speaker:** First of all, I want to thank the honourable Member for his comments and his explanation, but there still is a problem. Although the honourable Member for Rosemont has put forward certain arguments which are not altogether impossible to understand especially in politics, I still think we are faced with a difficult situation for the House.

Consequently, having found there is a *prima facie* case I am going to put the motion of the honourable Member for Beauce to the House. Then it will be for the committee and the House to decide. The honourable Member for Rosemont will of course have a chance to discuss the matter with his colleagues in the Chamber at the committee.

It may well be that out of that discussion may come something useful in terms of the general amity of Members among themselves. I do think it is a matter for the House to decide.

*The Speaker then put the question on the following motion of Mr. Bernier, seconded by Mr. Jean-Marc Robitaille (Terrebonne):*

*That the matter of the comments made by Mr. Tremblay, Member for Rosemont, with regard to Mr. DeBlois, Member for Beauport—Montmorency—Orléans and Assistant Deputy Chairman of Committees of the Whole House, as reported in the March 14, 1993, edition of the newspaper Beauport-Express, be referred to the Standing Committee on House Management.<sup>4</sup>*

*Immediately after the motion was adopted, Mr. Tremblay questioned the Speaker about the reasons for his decision. The Speaker made the following remarks.*

**Mr. Speaker:** The honourable Member for Rosemont will understand it is not appropriate for the Chair to give an explanation after making its decision. However, I suggested he withdraw his remarks as reported in the paper. The honourable Member may not agree with this suggestion by the Chair, but lacking a specific statement by the honourable Member in which he withdraws his words, I believe it is appropriate to give the House and the committee an opportunity to consider this matter. The honourable Member has every right to explain his case, and he will have ample opportunity to do so in committee. After this brief explanation, I think the case is closed. Once the committee has tabled its report, the House may have a chance to consider the matter again. However, for the time being, the case is closed.

**Postscript:** On March 25, 1993, Mr. Tremblay announced to the House that he wished “to withdraw the comments that were construed as offensive.” The Speaker expressed appreciation for the Member’s gesture and hoped the matter was resolved.<sup>5</sup> There is no record that the Standing Committee on House Management considered the matter.

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1. *Debates*, March 16, 1993, p. 17027.
2. *Debates*, March 23, 1993, pp. 17403-4.
3. *Debates*, March 23, 1993, pp. 17404-5.
4. *Journals*, March 23, 1993, p. 2688.
5. *Debates*, March 25, 1993, p. 17537.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Interference with Members—intimidation and immunity: right of Member to be free from intimidation and immune from prosecution in respect of proceedings in Parliament

July 18, 1988

*Debates*, pp. 17672-4

**Context:** On May 4, 1988, Mr. Jack Shields (Athabasca) rose on a question of privilege alleging that his rights and privileges as a Member to speak in a free and unfettered way had been breached as a result of a lawsuit brought against him following questions he had raised in the House. Other Members also intervened on the matter.<sup>1</sup> The Speaker, having interjected throughout the discussion of the question of privilege, reserved on the matter. On July 18, 1988, the Speaker delivered his ruling, which is reproduced in extenso below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I want to bring to honourable Members' attention a matter of some importance which was raised on Wednesday, May 4, 1988, by the honourable Member for Athabasca, and commented upon by other honourable Members on both sides of the House. On that day the honourable Member raised a question of privilege alleging that his rights and privileges as a Member of the House had been breached as a result of a lawsuit commenced against himself and other parties.

I have given this matter serious consideration and carefully reviewed the arguments offered by all the honourable Members who participated in this discussion and I thank them for assisting the Chair. I have also consulted the relevant authors and precedents on the matter, and I am now prepared to make a determination on the question at issue.

For the benefit of honourable Members and the public the Chair would like to summarize the facts as they were presented by the honourable Member in his intervention. On October 14, 1987, the honourable Member for Athabasca placed on the *Order Paper* Question No. 207, which reads as follows:

Since April 1968, have (a) grants (b) loans (c) loan guarantees (d) contracts been provided by the Government to Hurtig Publishers of Edmonton or other Hurtig enterprises and if so, how many and, in each case (i) on what date (ii) in what amount (iii) for what purpose?

In accordance with the rules of the House, the Government provided a written answer on January 27, 1988. Essentially, that answer indicated that certain government Departments and agencies granted various amounts of money to

Hurtig Publishers Ltd. for the purposes of training programs, sales and marketing assistance, and feasibility studies, *inter alia*, as reported at page 15125 of *Hansard* for May 4, 1988.

At that point, so that everyone understands this, the honourable Member had done what he was completely entitled to do. He had used the written question procedure to ask the Government certain questions. The Government then responded to those questions.

The honourable Member stated in his argument that, in late February, as a result of the answer tabled in the House, he received a letter from a law firm in Edmonton, acting for Mr. Mel Hurtig, which intended to proceed with a defamation action against the honourable Member. The honourable Member further advised the Chair that he then received a second letter in late March from another firm acting for Hurtig Publishers Ltd., stating that their client intended to bring an action against him pursuant to the *Defamation Act*. There is of course in each province an Act which sets out the law of defamation in that province.

The honourable Member expressed the view in this Chamber that both letters were based on the information he had received in reply to his question on the *Order Paper* and that these two letters advising him of the intention to proceed with the lawsuit were, and I quote the honourable Member:

... a deliberate attempt to intimidate me from seeking further information with regard to grants given by the Government to Mel Hurtig or Hurtig Publishers.

I understand that the honourable Member has now received a copy of the Statement of Claim in the action referred to, and of course a copy has also been obtained by the Chair.

In his remarks the honourable Member for Athabasca argued that his "privilege to speak freely without fear" in the House had been violated by the action brought against him which "goes to the very heart of a Member's obligation, a Member's right, a Member's privilege to ask questions in a free and unfettered way in the House of Commons".

The position as put forward by the honourable Member for Athabasca was supported by the honourable Member for Peace River (Mr. Albert Cooper) who stressed that freedom of speech is a fundamental privilege and that, in his words, "honourable Members are also to be free from intimidation or threats that would try in some way to direct their actions".

In the same vein the honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier) reiterated the principle that, as he said, "nothing can impede the privilege of a Member to ask questions in the House, either by written

deposition or orally during Question Period". The honourable Member for Ottawa—Vanier quoted from *Beauchesne* Fifth Edition, Citation 55, which reads in part as follows:

The privilege of freedom of speech is both the least questioned and the most fundamental right of the Member of Parliament on the floor of the House and in committee. It is primarily guaranteed in the British Bill of Rights....

There can be no question as to the relevance and appropriateness of the principles invoked by honourable Members in their interventions. Indeed, as all honourable Members very well know, the privilege of freedom of speech is so fundamental that this House could not discharge its constitutional functions without it.

British parliamentary institutions, from which our own system was derived, were afforded the protection of the Bill of Rights three centuries ago. It is interesting that the Commonwealth Parliamentary Association is presently celebrating the three hundredth anniversary of the Bill of Rights at Westminster.

Article 9 of that Act clearly states:

The freedom of speech and debates, or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

Careful reading of that provision raises at least one particular concern in relation to the matter now before us. Essentially the privilege of freedom of speech protects "proceedings in Parliament". The question to be answered then is, what constitutes proceedings in Parliament?

This phrase has never been exactly and completely defined by statute, by the courts of law, or by the House itself. In its narrow sense the expression is used to denote the formal transaction of business in the House or in committee. Traditionally it covers both the asking of a question and the giving of a written notice of such question, and also includes everything said or done by a Member in the exercise of his or her functions as a Member of the House, either in the House or in any committee of the House in the transaction of parliamentary business. I refer to *May Twentieth* Edition, page 92.

In its wider sense "proceedings in Parliament" is used to include matters connected with or ancillary to the formal transaction of business. Obviously, written questions placed on the *Order Paper* are to be considered part of proceedings in Parliament. In effect, they are time-saving substitutes for speaking in the House. As stated in *May Twentieth* Edition, page 92:

While taking part in the proceedings of a House, Members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.

I emphasize again, “while taking part in the proceedings of a House”. The insertion of the term “proceedings” in the Bill of Rights of 1688 gave statutory authority to the privilege of freedom of speech, which was later clearly recognized in the law case of *Dillon v. Balfour* reported in 1887, [Volume 20, *The Law Reports (Ireland)*] at page 600. The judgment stated that words spoken by a Member of Parliament in the House of Commons are absolutely privileged and the court has no jurisdiction to entertain an action in respect of them. I cite *Halsbury's Laws of England*, Fourth Edition, Volume 28, page 52 as follows:

When Parliament is sitting and statements are made in either House, the member making them is not amenable to the civil or criminal law, even if the statements are false to his knowledge, and a conspiracy to make such statements would not make the members guilty of it amenable to the criminal law.

While a Member of the House receives absolute protection and is free to speak as he sees fit during a debate in Parliament, subject only to the rules of the House, it is not so when the Member chooses either to speak or to publish his speech outside the House. The same privilege does not extend to statements made outside a “proceeding in Parliament” even if it is a reproduction of what was said in the House.

In the First Edition of his book published in 1844, *Erskine May* expressed that reservation as follows:

... a member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character of individuals, and he is protected by his privilege from any action for libel; but if he should proceed to publish his speech, his printed statement will be regarded as a separate publication, unconnected with any proceedings in Parliament.<sup>2</sup>

The same principle is reiterated in the Twentieth Edition at page 202 where it states:

... when a matter is a proceeding of the House, beginning and terminating within its own walls, it is obviously outside the jurisdiction of the courts.... But if a proceeding of the House issues in action affecting the rights of persons exercisable outside the House (as e.g., in the publication of a part of the proceedings of the House ...) then the person who published ... will be within the jurisdiction of the courts.

That does not mean, of course, that the person who published may, given the circumstances, be subject to condemnation by the courts. It only means that if published outside, that publication would be subject to the courts but all the defences which would be available to any other citizen would, of course, be available to the Member of Parliament if published outside this place. To make it very clear, when I use the word “publish” I mean either to publish in print or to express verbally to others by way of television, radio, or otherwise.

To expand on this further, in [the First Edition of] *Parliamentary Privilege in Canada*, Joseph Maingot states on page 38:

... a Member could not come to Parliament for protection if he was sued for having published to the world. One could not question what the member said in the House but publication outside the House was another matter. The protection afforded the member speaking in the House is, in law, spoken on an occasion of absolute legal privilege, that is to say, spoken with impunity to the outside world, but he publishes outside the House at his peril. Parliament protects him when he speaks in Parliament, but when he speaks outside, or publishes outside what he says inside Parliament, Parliament offers no protection; only the common law does, if it is offered at all.

In the case at hand there is no indication that the legal proceedings commenced against the honourable Member for Athabasca are based on a proceeding in Parliament. From a close reading of the statement of claim filed in the Court of Queen's Bench of Alberta on April 26, 1988, it would appear that these proceedings relate to a newspaper article published in *The Edmonton Sun* and to the comments attributed in that article to the honourable Member for Athabasca and to written information allegedly provided to employees of the *Toronto Sun* by the honourable Member.

As this legal proceeding appears in no way to be based upon "proceedings in Parliament", but rather upon events which transpired outside of Parliament, the Chair cannot find, after long and very careful consideration, that the honourable Member's privilege has been breached.

I want to add some comment to this because it is important. Nothing in this ruling should be taken to indicate whether the honourable Member for Athabasca has or has not a defence to the defamation action taken against him. This ruling is confined to whether the honourable Member's privileges as a Member of Parliament have been violated.

There is, of course, under the law of defamation outside this place, a defence of privilege. It is important to understand the distinction and to understand that my ruling in no way intrudes into the law of defamation or into the present action concerning the honourable Member and others, and in no way affects whatever defences are available to that honourable Member outside this place.

I want to apologize to the honourable Member for Athabasca for being so long in returning to this House with this ruling. I have to say that the ruling gave the Chair a great deal of difficulty. I have decided it, I think correctly, but not without a great deal of concern. I thank honourable Members.

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1. *Debates*, May 4, 1988, pp. 15124-7.
2. *May*, 1st ed., p. 81.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Interference with Members—intimidation and immunity: alleged attempt to intimidate a Member by distribution and publication of a press release containing false information

August 12, 1988

*Debates*, p. 18272

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**Context:** On July 14, 1988, Ms. Claudy Mailly (Parliamentary Secretary to the Minister of National Revenue) rose on a question of privilege and alleged that because of an erroneous press release from the Public Service Alliance of Canada and a subsequent press report based on it, she was being intimidated and “blacklisted.” Ms. Mailly explained that the union representing federal government language teachers had organized a demonstration at her constituency office and had issued a press release stating that she did not support the teachers in their negotiations with Treasury Board when, in fact, she supported the teachers and had indicated that she would make representations on their behalf to the President of the Treasury Board.<sup>1</sup> The Speaker reserved on the matter and rendered his decision, which is reproduced in extenso below, on August 12, 1988.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Thursday, July 14, 1988 the Parliamentary Secretary to the Minister of National Revenue claimed that her privileges as a Member had been breached in relation to a press release prepared by the Public Service Alliance of Canada, the contents of which were subsequently published in the weekly newspaper “*Le Dimanche Outaouais*”. The press release, dated July 6, 1988, which was delivered to the honourable Member’s office on July 7, 1988, dealt with the strike of the federal Government language teachers and a demonstration in support of the teachers organized to take place on the 6th of July, 1988 at the honourable Member’s riding office. The press release, copies of which have been supplied to the Chair, states that the honourable Member has not supported the teachers in their negotiations with the Treasury Board.

The honourable Member explained that she had indeed supported the teachers’ cause and had told them that she would intervene on their behalf with the President of the Treasury Board regarding their demands for preparation time and language of negotiations. The honourable Member went on to assert that the information contained in the press release is false and that its distribution and subsequent publication in a local newspaper constitute an attempt to intimidate her as a Member of Parliament in the exercise of her duties and as such represents a breach of privilege.

The honourable Member may indeed have a legitimate grievance and can certainly dispute the facts as they are reported. The issue which the Chair must precisely decide is whether the preparation and publication of this information about a Member of Parliament constitutes a *prima facie* question of privilege in the traditional sense. Past precedents are highly restrictive in this regard and generally require that clear evidence of obstruction or interference with a Member in the exercise of his or her duty be demonstrated in order to form the basis for a claim of a breach of privilege.

Speaker Jerome, in dealing with a similar case on June 23, 1977 ruled that "... the protection of an elected person against unwarranted or intemperate publicity, even abuses or defamatory publicity, is precisely that which is enjoyed by every citizen before our courts". He went on to add that "As elected people we can and do expect to be the targets of attack. When those attacks seem offensive I think it is appropriate that the honourable Member is offered the courtesy of the House to extend to his honourable colleagues an explanation of the circumstances". He concluded that "... when these matters do take place, if they go beyond the point of being offensive to the point of being defamatory in a legal sense, certainly Members ought to and will I am sure pursue matters through the courts."<sup>2</sup>

Past Speakers have consistently argued that freedom of the press is one of the fundamental rights of our society which ought to be interfered with only if it is clearly in contempt of the House. Members who have complaints about reporting of their positions or activities should seek remedy in the courts.

In the case raised by the honourable Member for Gatineau (Ms. Mailly), I must rule that the matter does not constitute a question of privilege but that she may avail herself of the appropriate legal procedures if she feels that her personal reputation has suffered damage. I thank the honourable Member for raising this issue and trust that this ruling has been helpful to her and to other honourable Members.

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1. *Debates*, July 14, 1988, pp. 17554-5.
2. *Debates*, June 23, 1977, pp. 7044-5.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Interference with Members—intimidation and immunity: Member's right to be exempt from attendance as a witness in a court of law during a parliamentary session; service of a subpoena within parliamentary precincts; communications between Members of Parliament and members of the public

May 19, 1989

*Debates*, pp. 1951-3

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**Context:** On April 4, 1989, Mr. David Kilgour (Edmonton Southeast) rose on a question of privilege regarding Members' immunity from giving evidence in civil trials against their will. He explained that he had been ordered to appear in a civil proceeding in the Supreme Court of British Columbia and an attempt had been made to force him to identify certain individuals who had visited his constituency office. Mr. Kilgour argued that the same privilege afforded to solicitor/client communications should extend to communications between a Member of Parliament and his or her constituents because he declared, "it is important that Canadians know they can come to us in our offices and speak to us in confidence and not later have that matter forced out of us in a court of law."<sup>1</sup> The Speaker reserved on the matter and returned to the House on May 19, 1989 to deliver the ruling reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Tuesday, April 4, 1989, the honourable Member for Edmonton Southeast raised a question of privilege and, in addition, provided the Chair with certain related material.

The facts are as follows:

On March 14, 1989, a subpoena signed by a Judge of the Supreme Court of the Province of British Columbia was served upon the honourable Member for Edmonton Southeast in his Centre Block office. Your Speaker's permission was neither sought nor obtained for this service. Shortly after being served, the honourable Member contacted Mr. Marcel Pelletier, the Law Clerk and Parliamentary Counsel of this House who wrote to the counsel for the plaintiffs in this civil action explaining that a sitting Member of Parliament enjoys the privilege of exemption from attending as a witness in a court of law and concluded in pointing out that: "This privilege is based on the paramount right of Parliament to the attendance and service of its Members."

Although Parliament was prorogued from February 28 to April 3, there can be no doubt that the Member's immunity persisted throughout this period. In this connection, I refer honourable Members to May's 20th edition, page 107, and to Bourinot, 4th edition, pages 45 and 46.

In further correspondence via facsimile machine between the honourable Member and counsel for the plaintiff, the honourable Member for Edmonton Southeast wrote that he would, as a former member of the Bar of British Columbia, appear if the Judge insisted. The counsel for the plaintiff replied that indeed the Judge insisted, relying on the Member's previous statement, and ordered him to appear on March 31st or to have counsel appear on his behalf on March 30th. The honourable Member responded to this last [missive] by appearing before the court on March 31st.

On April 4 he explained to the House what happened in the statement found at page 39 of *Hansard*:

Appearing in court as ordered, I attempted to convince Her Lordship that an irresistible force was colliding with an immovable object. The court eventually ordered me to be sworn, and thereafter in effect directed me to reply to a question to identify a number of individuals who had come to my constituency office in April of 1986.

The court adjourned for lunch when I declined to identify those persons. On reconvening, Her Lordship again indicated I should identify my visitors, but counsel for the plaintiff withdrew the subpoena, ... just before the court ruled on the contempt citation. Her Lordship later said that she had intended to cite me for contempt.

I have just quoted what the honourable Member said in argument before me.

From this sequence of events, the honourable Member claims that his privileges have been infringed.

There are two issues I wish to deal with before turning to the question raised by the honourable Member.

First, I feel that the service of the subpoena within the precincts of the House of Commons was improper without the permission of the Speaker.

**Some Hon. Members:** Hear, hear!

**Mr. Speaker:** The precedents supporting this view are quite numerous, and it is unnecessary for me to cite them. Honourable Members should not, on their own accord, decide to accept service within the precincts. Nevertheless, if they wish to waive their parliamentary immunity, they can do so by leaving the precincts and accepting the service elsewhere. To do otherwise is to put at risk our ancient privileges, which are more than simply tradition. They are part of the law of Canada.

The Chair is concerned that erosion over time of those privileges would not serve this institution's interests. I could add, nor would it serve the public interest. Our privileges exist to enable Members to perform their duties without let or hindrance and, by extension, to protect the rights of the public they serve and represent.

Second, I would warn and caution those who attempt to further improper service of subpoenae, that they may be acting in a manner that is in contempt of the House. In this respect, I refer honourable Members to the first issue of the *Minutes of Proceedings and Evidence of the Special Committee on Rights and Immunities of Members* presented to this House on July 12, 1976, where at page 1:19, Members will note that a Committee of the British House found it a contempt of Parliament to do something that has the object "... of furthering legal proceedings ..." which are improper *ab initio*.

The basis of the honourable Member's submission is that where civil actions are concerned, Canadians should know that they can speak to Members of Parliament in confidence without fear of later disclosure in a court of law. While appreciating the honourable Member's point, I have had difficulty in finding a precedent to support the view that communications between an MP and his or her constituents or, indeed, the public in general, are privileged in the same way as those between lawyer and client.

Speaker Lamoureux in a ruling of April 29, 1971, had this to say:

Privilege is that which sets honourable Members apart from other citizens giving them rights which the public do not possess. I suggest we should be careful in construing any particular circumstance which might add to the privileges which have been recognized over the years and perhaps over the centuries as belonging to [Members of] the House of Commons. In my view, parliamentary privilege does not go much beyond the right of free speech in the House of Commons and the right of a Member to discharge his duties in the House as a Member of the House of Commons.<sup>2</sup>

This view was reinforced on February 20, 1975, by Speaker Jerome, who made the following comment:

The consequences of extending that definition of [parliamentary] privilege to innumerable areas outside this Chamber into which the work of an MP might carry him, and particularly to the great number of grievances he might encounter in the course of that work, would run contrary to the basic concept of privilege.<sup>3</sup>

On this last point I would also refer honourable Members to my ruling on November 17, 1987 where I explained that the House cannot, in fact, create new privileges.<sup>4</sup>

Perhaps an argument could be made that to be forced to testify in a court of law on a matter concerning confidential communications with constituents amounts to an undue influence, thus hindering the Member in the proper fulfilment of his duties. This argument might be easier to sustain if the honourable Member had availed himself of the remedy available to him. He could have declined to appear as a witness, as he was entitled to do by virtue of his privilege as a Member of Parliament. By waiving his privilege, appearing, being sworn and answering some questions, he appears to have voluntarily submitted to the jurisdiction of the court. Once this privilege is waived, the Member surrenders the protection implicit in it.

Consequently, I am unable to find from these previous declarations or in the facts as set out in this present situation anything that would allow for the extension of parliamentary privilege to communications between Members of Parliament and members of the public.

There is another aspect of this matter which disturbs me very much. In the supporting documentation supplied to me by the honourable Member it is clear that counsel for the plaintiffs in this case questioned the right of the honourable Member to claim his parliamentary immunity, alleging that this was a matter for the court to decide. This claim was made in total disregard of what was established and easily verifiable parliamentary law, clearly and explicitly explained by the Law Clerk and Parliamentary Counsel in his letter of March 15.

Let me state for the record that the right of a Member of Parliament to refuse to attend court as a witness during a parliamentary session and during the 40 days preceding and following a parliamentary session is an undoubted and inalienable right supported by a host of precedents.

The honourable Member did not base his complaint on the contents of the letter written by counsel for the plaintiffs in the case concerned. Had he done so, I would certainly have had to determine whether or not there was a *prima facie* case of contempt of Parliament, of undue pressure being brought to bear upon the Member for the purpose of questioning his right to claim parliamentary immunity. Fortunately, counsel for the plaintiffs withdrew the subpoena, and the matter did not proceed further.

To sum up, on these facts I am unable to find that the protection of parliamentary privilege extends to communications between Members of Parliament and the public. I must also warn honourable Members that waiving of a privilege deprives them of the protection they would otherwise enjoy, not simply partially, but totally. I am gravely concerned that the subpoena was served on a Member of this House within parliamentary precincts. I would appeal to my colleagues, should this occur in the future, to refuse to accept any writ of summons within the precincts and to report to the Speaker should such an attempt be made.

Finally, I take a serious view of the action of a member of the legal profession in questioning the right of a Member of Parliament to claim immunity from appearing as a witness and alleging that a court, and not Parliament, had the power to make a determination in such a case.

I want to thank the honourable Member for Edmonton Southeast for his patience in allowing the Chair time to reflect at length on the important issues he raised in the House.

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1. *Debates*, April 4, 1989, p. 39.
2. *Debates*, April 29, 1971, p. 5338.
3. *Debates*, February 20, 1975, p. 3386.
4. *Debates*, November 17, 1987, pp. 10887-9.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Interference with Members—intimidation and immunity: alleged intimidation of Member; service of legal documents within parliamentary precincts

June 10, 1993

*Debates*, pp. 20693-4

**Context:** Following Question Period on June 4, 1993, Mr. Brian Tobin (Humber—St. Barbe—Baie Verte) rose on a question of privilege regarding a letter he had received prior to Question Period in one of the lobbies of the House from the solicitors for the Communications Director for one of the candidates in the Progressive Conservative Leadership Campaign. In the letter, the solicitors gave notice of their intention to reserve the right to bring action against the Member for a written and verbal statement he had made against the Communications Director outside the precincts of the House on June 3, 1993 unless the Member made a full and unconditional apology and retraction. Mr. Tobin argued that receipt of the letter in the precincts of the House constituted a question of privilege and that the actions of the Communications Director and the solicitors as well as those of the Minister of State and Leader of the Government in the House (Hon. Harvie Andre) who was familiar with the contents of the letter, constituted an attempt to intimidate and prevent him from performing his duties. Mr. Tobin also argued that as the Minister had quoted from the letter in a Question Period exchange, he should be required to table it. The Minister acknowledged that he had received a copy of the letter delivered to Mr. Tobin, however he claimed that he received it after it was given to Mr. Tobin. The Minister also informed the House that the document he had quoted from during Question Period was one that Mr. Tobin had circulated to the media and he maintained, it contained a false statement “slanderous and wrong.” After hearing a number of interventions, the Deputy Speaker (Hon. Andrée Champagne) first informed the House that a Minister could not be forced to table a letter which was not a “state document,” and then indicated that she would take the matter under advisement. Other Members also intervened on the matter.<sup>1</sup> On June 10, 1993, the Deputy Speaker delivered her ruling which is reproduced in extenso below.

### DECISION OF THE CHAIR

**Madam Deputy Speaker (Mrs. Champagne):** I am now ready to rule on the matter raised by the honourable Member for Humber—St. Barbe—Baie Verte on Friday June 4, 1993. I was hoping the honourable Member would be in the House. He was told but unfortunately he was not here yesterday and he is not here today.

In his submission, the honourable Member stated that in one of the lobbies just before Question Period he received a letter from the solicitors of Mr. Tim Ralfe giving notice of their intention to reserve the right to bring action for libel against the honourable Member. The letter, which I have examined, demands that a full and unconditional apology and retraction be delivered by the

honourable Member for a verbal and written statement about Mr. Ralfe which the letter claims was made by the honourable Member outside the precinct of Parliament on June 3, 1993. It is the contention of the honourable Member for Humber—St. Barbe—Baie Verte that the receipt of this letter in the precincts of the House constitutes a question of privilege. He has argued that the action of Mr. Ralfe and his solicitors and the apparent familiarity of the Government House Leader with the letter constitutes an attempt to intimidate him and prevent him from performing his duties.

I have reviewed the situation re-examining what was said during Question Period and during the discussion of this matter. I would like to take this opportunity to thank those honourable Members who made interventions.

As the honourable Member for Glengarry—Prescott—Russell (Mr. Don Boudria) pointed out, there are two questions to be answered to determine if this should be considered a *prima facie* question of privilege. Has there been an attempt to intimidate a Member in the exercise of his duties? Were legal documents served or delivered in the precincts of Parliament, in particular one of the lobbies, without the Speaker's express permission?

Joseph Maingot in [the First Edition of] *Parliamentary Privilege in Canada*, page 96, states:

While it is clear that the Member is afforded absolute privilege in law for acts done and words said during a parliamentary proceeding, he speaks outside the House at his peril without the protection of parliamentary privilege. In these same circumstances, however, he is afforded the protection of the common law like anyone else to the extent that it would apply.

While it is the Speaker's duty to maintain decorum in the House, the Speaker, as servant of the House, does not have the power to instigate disciplinary action against a Member for actions taken or words spoken outside the Chamber of the House. What a Member says outside the House about anyone is subject to the laws of the land relating to libel or slander as it would be for any other Canadian—if indeed the comments are actionable. What Members say in the Chamber, however, is protected by privilege. Thus if the situation is as described in the letter to the honourable Member for Humber—St. Barbe—Baie Verte, then this cannot be considered a question of privilege and it is therefore not up to the Speaker to intervene.

There is a long-standing tradition that process cannot be served in the precincts of the House of Commons. The Chair has always maintained that such service of process would be improper without the permission of the Speaker. As regards civil matters, this was forcefully reiterated in a Speaker's ruling of May 19, 1989.<sup>2</sup>

Having carefully examined the letter received by the honourable Member from the solicitors of Mr. Ralfe, the Chair must conclude that it does not fall under the definition of process implicit in the notion of which is issuance from a court of law. It is clear from the text of the letter that no legal proceedings have been begun and delivery of the letter was not a service of process. The letter could just as well have been sent through the mails as delivered by hand. There was no requirement to inform the Speaker, nor are there any grounds for the Chair to intervene in this matter.

For these reasons this situation does not meet the criteria of a *prima facie* question of privilege. I thank the honourable Member.

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1. *Debates*, June 4, 1993, pp. 20375-7.
2. *Debates*, May 19, 1989, pp. 1951-3.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Interference with Member's office: alleged interception or monitoring of telephone conversation between an assistant to a Member and penitentiary inmate

November 17, 1987

*Debates*, pp. 10887-9

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**Context:** On October 26, 1987, Mr. John Nunziata (York South—Weston) rose on a question of privilege regarding an alleged interception by the Correctional Service of Canada of a telephone conversation between his office and a constituent who was an inmate of Joyceville Penitentiary. After relating the details of the incident, Mr. Nunziata contended that his privileges as a Member had been breached with regard to his ability to deal with constituents "in an unfettered fashion" and his privilege as an opposition critic for the Solicitor General had been breached with regard to access to inmates and conducting conversations with them in private. After hearing submissions from other Members, the Speaker adjourned the matter until the House could hear from the Solicitor General to whom the Correctional Service of Canada reports.<sup>1</sup>

The next day, October 27, 1987 the Solicitor General (Hon. James Kelleher) rose in the House to respond to the question of privilege and to provide additional background information to clarify the facts. The Minister noted that the phone and the room used by the Joyceville inmate to speak with Mr. Nunziata's assistant had a sign which clearly stated that, "all activities, including conversations and telephone communications in this area, are subject to monitoring and may be recorded." He also indicated that a Correctional Service officer who was in the room at the time as is the usual practice, upon overhearing what the inmate had said, reported the conversation to her superiors. At no time, he insisted, was interception equipment used. In response to a question from the Speaker, the Minister further indicated that the Correctional Service fully respects solicitor-client privilege and while there was in the prison a special room which could be used by inmates for private telephone conversations with their solicitors, it was not offered in this instance as the inmate was not contacting Mr. Nunziata as his solicitor but rather in his capacity as a Member of Parliament. Mr. Nunziata spoke again and asserted that in the legal field, precedents support the argument that the privilege attached to solicitor-client communications extends to the solicitor's office as well and concluded that although he did not speak personally with the inmate, his privileges as a Member must also extend to any staff working on his behalf.<sup>2</sup> The Speaker reserved on the matter and returned to the House on November 17, 1987 to deliver the ruling reproduced in extenso below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I bring to the attention of honourable Members that I am now ready to give my ruling on a matter raised by the honourable Member for York

South—Weston on Monday, October 26. I wish to thank both him and the Solicitor General for their co-operation in assisting the Chair in arriving at a decision.

Honourable Members who were able to hear the argument will recognize that the facts are as follows. The office of the Member for York South—Weston received a phone call from a constituent whose husband was an inmate at the time in the Joyceville Medium Security Penitentiary. She indicated her husband, head of the inmates' committee, wished to speak to the honourable Member and to his assistant, a certain Mr. Pratt. The Member's assistant contacted the inmate and reported to the honourable Member. Mr. Pratt received further instructions and again contacted the inmate who, in turn, according to the honourable Member for York South—Weston "relayed a list of concerns with regard to the situation at Joyceville".

The honourable Member then told the House: "As a result of this conversation the inmate was transferred to the maximum security penitentiary at Millhaven and put in segregation."

At no time did the honourable Member for York South—Weston meet or speak directly with the inmate.

The Solicitor General is in basic agreement with the statement of facts outlined by the honourable Member for York South—Weston, but added that the phone and room used by the inmate in Joyceville had the following sign clearly displayed:

All activities, including conversations and telephone communications in this area, are subject to monitoring and may be recorded.

The Solicitor General also told the House that a Correctional Services officer was in the room with the inmate. Upon overhearing what the inmate said to Mr. Pratt, the officer reported to the warden of Joyceville and he, in turn, reported to his superiors. The inmate was subsequently transferred to another institution, Millhaven.

The grievance expressed by the honourable Member for York South—Weston was ably supported by the honourable Member for Glengarry—Prescott—Russell (Mr. Don Boudria), the honourable Member for Vancouver—Kingsway (Mr. Ian Waddell), and the honourable Member for Windsor West (Hon. Herb Gray); the Solicitor General and the Minister of State (Hon. Doug Lewis) also helped the Chair. I thank all honourable Members for their very useful contributions.

The request of the honourable Member that the matter be ruled to be a *prima facie* breach of privilege raises several points. I will now consider them one by one.

Members will have heard the definition of parliamentary privilege before but it bears repetition. *May's 20th Edition*, at page 70, sets out the classic definition. *Beauchesne Fifth Edition* repeats that definition at page 11 in Citation 16:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus, privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are “absolutely necessary for the due execution of its powers”. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its members and the vindication of its own authority and dignity.

Maingot, in [the First Edition of] *Parliamentary Privilege in Canada*, at page 12, gives further but similar definitions. I should add that Canadian Speakers have put such definitions on the record many times.

Apart from the definitions, we must consider the fact that the House cannot create new privileges. On this point I would refer honourable Members to page 75 of *May 20th Edition*. Similar views can be found in all authoritative parliamentary texts. On April 29, 1971, Mr. Speaker Lamoureux said in that respect:

Privilege is that which sets honourable Members apart from other citizens giving them rights which the public do not possess. I suggest we should be careful in construing any particular circumstance which might add to the privileges which have been recognized over the years and perhaps over the centuries as belonging to Members of the House of Commons. In my view, parliamentary privilege does not go much beyond the right of free speech in the House of Commons and the right of a Member to discharge his duties in the House as a Member of the House of Commons.<sup>3</sup>

On February 20, 1975, Speaker Jerome cited that ruling with approval stating that “... improvement upon it is impossible and ... unnecessary”. Speaker Jerome continued and made the following comment:

The consequences of extending that definition [of Mr. Speaker Lamoureux] to innumerable areas outside this Chamber into which the work of an MP might carry him, and particularly to the great number of grievances he might encounter in the course of that work, would run contrary to the basic concept of privilege.<sup>4</sup>

The Chair was unable to find in these various definitions and quotations anything which would extend parliamentary privilege to the actions of a member of the staff of an honourable Member of this House.

That being said, I am sure honourable Members will appreciate that this matter does not fall within the restricted scope of the concept of parliamentary privilege.

Indeed, I can go further and state that even without the direct involvement of the staff person and with the direct involvement of the Member himself, I could not find that a *prima facie* case of privilege exists. Let me explain by quoting Speaker Jerome again.

In 1975, in ruling on an alleged warning given by the National Harbours Board to its staff against communicating with Members of Parliament, Mr. Speaker Jerome clearly stated:

... the classic definition of a question of privilege does not fit circumstances in which a Member in his duties outside this House finds that his scope is being restricted or attempts are being made to restrict his scope of intervention and effective work on behalf of not only his own constituents but his point of view as a Member of the federal Parliament.

He continued:

... I feel absolutely certain that the classic definition of a question of privilege as we know it does not fit because it does not affect the right of speech of the honourable Member in this House. Indeed, his right of speech in this House to complain and to raise this grievance is unquestioned.<sup>5</sup>

That statement of Speaker Jerome is very clear indeed.

As to the assertion made by several honourable Members that an opposition critic has some special privileges, the short answer is obviously that while they certainly have some extra responsibilities and obligations, they do not have any special privileges. Critics receive, and certainly should receive, every courtesy to assist them in their duties, but they have no privileges above those of any other Member.

Mr. Speaker Lamoureux made a ruling on April 29, 1971, which may be helpful to honourable Members in this connection and I commend it to them.

I want to assure all Members that the Chair recognizes the importance of this matter and the seriousness of the situation brought to our attention by the honourable Member for York South—Weston, but I regret that under the circumstances it should not and cannot be dealt with as a question of privilege.

I can only say that I hope that having given the honourable Member a chance to raise this serious matter in this Chamber may have assisted the honourable Member and others to find some satisfactory resolution to the situation which the

honourable Member has brought to the attention of the House. I thank the honourable Member for his intervention and for bringing this matter to our attention.

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1. *Debates*, October 26, 1987, pp. 10385-7.
2. *Debates*, October 27, 1987, pp. 10447-9.
3. *Debates*, April 29, 1971, p. 5338.
4. *Debates*, February 20, 1975, p. 3386.
5. *Debates*, February 26, 1975, p. 3580.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Interference with Member's office: alleged breach of privacy of Members' offices; removal of electronic files in personal computers by House of Commons staff

February 9, 1988

*Debates*, pp. 12761-2

**Context:** On January 28, 1988, Mr. Iain Angus (Thunder Bay—Atikokan) rose on a question of privilege regarding "the breach of the rights of three Members of Parliament as it relates to the privacy of their physical offices." He explained that he, and two of his caucus' colleagues, Mr. Nelson Riis (Kamloops—Shuswap) and Mr. Rod Murphy (Churchill), were participants in a pilot project involving the installation of personal computers in their offices as authorized by the Board of Internal Economy. Mr. Angus complained that House of Commons staff, working under the OASIS (ie. Office Automation Systems and Information Services) group, had entered the offices of the aforementioned Members (and perhaps other Members) and "purposely removed a software program from the computers in a systematic way without indicating to either staff, or Members their reason for doing so." He indicated that he was not suggesting that the removal of the computer software was unnecessary, but was complaining of the manner in which it was accomplished. He also noted that a number of files had been accidentally erased by the procedure. Commenting on the necessity to put in place guidelines for the future, Mr. Angus asked the Speaker to review the rules to ensure that the same protection exists for electronic information as has always been recognized for hard-copy material. In response to a question from the Speaker, the Member indicated that he would be prepared to move the appropriate motion should the Speaker find a *prima facie* case of privilege.<sup>1</sup>

The Speaker invited any other Members with similar experiences to relate to call his office immediately and then took the matter under advisement. He returned to the House on February 9, 1988, to deliver the ruling reproduced in extenso below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On January 28, 1988, the honourable Member for Thunder Bay—Atikokan claimed that the rights of three Members of Parliament had been breached in relation to the privacy of their physical offices. He contended that House of Commons staff had removed software from computers in Members' offices without informing either the Members concerned or their staff what they were doing. I undertook to look into the specific circumstances of this issue and report back to the House. I am now ready to do so.

There is a pilot project underway at the present time in relation to the installation of personal computers in the offices of Members of the House. There are some 29 participants involved in this pilot project at the present time.

In an effort to proceed as expeditiously as possible with the pilot [project], interim software was installed in various personal computers in order for the evaluation phase of the project to proceed on schedule. This interim software was intended to be utilized only until the customized software was available.

On December 2, 1987 sufficient copies of the customized software were available for installation and evaluation in nine of the twenty-nine pilot machines, and the substitutions were made. The balance of the pilot project participants were provided with copies of the final version of the software on January 27, 1988.

It would appear that the intention of staff in the OASIS group was simply to ensure that Members' offices were equipped with the most up-to-date software and, in the case of pilot project participants, that they be provided with the same software that will shortly be provided to all Members' offices.

Clearly, however, the extent to which OASIS staff apprised Members' staff of what they were doing was insufficient. In that context, the complaint raised by the honourable Member for Thunder Bay—Atikokan is not without foundation. More important, he underscores an issue that pertains to policies and procedures for servicing and maintaining Members' personal computers so as to ensure the confidentiality and integrity of data stored and manipulated on these machines.

I am satisfied that what has occurred in this case was done innocently. However, the point made by the honourable Member for Thunder Bay—Atikokan that electronic information should be treated no differently from "hard copy" material is well taken. All staff involved in providing electronic equipment or electronic data processing services to Members have been cautioned on the importance, in future, of fully briefing Members' staff and obtaining their prior authorization before any alterations or changes are effected to Members' data bases or data processing equipment or software.

In addition, a policy statement covering these issues is now being prepared and will be submitted to the Standing Committee on Management and Members' Services for discussion, as quickly as possible.

This policy statement is to include not only the procedures and practices to be followed by House staff in relation to their access to and maintenance of computer hardware and software in Members' offices, but also the whole question of the safety and security of computerized data stored in Members' offices. This is an issue of vital importance and one which is to be addressed immediately.

In view of these facts, it would be the Chair's contention that there is no necessity to proceed with a question of privilege at this time.

I would like to thank the honourable Member for Thunder Bay—Atikokan for having raised this very serious issue and assure him, and all Members of this House, that corrective steps have been put in place to ensure that such an occurrence does not take place again.

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1. *Debates*, January 28, 1988, pp. 12361-2.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Interference with Member's office: office moved in Member's absence and without his consent

April 11, 1991

*Debates*, p. 19340

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**Context:** *On Monday, April 8, 1991, Mr. Louis Plamondon (Richelieu) rose on a question of privilege concerning the relocation of his Parliament Hill office. On the previous day, Sunday, April 7, 1991, House of Commons' staff had proceeded to transfer all contents and equipment from Mr. Plamondon's office to another office. According to Mr. Plamondon, this occurred without either himself or his staff having been informed of the move. Mr. Plamondon argued that such a move, in his absence and without his consent, constituted a breach of his privileges and was also "contrary to the Charter of Rights and Freedoms." In presenting his case of privilege, Mr. Plamondon described the sequence of events which led to his complaint. He stated that when he was initially informed that his office would be moved, he had refused on the basis that it implied an unnecessary cost to the taxpayers. He had then requested the Speaker to intervene on his behalf since, as an Independent (Bloc québécois) Member, he was not represented by a Whip. He indicated that at the time of the move he had not received a response from the Speaker.*

*At that point, the Speaker interrupted the question of privilege to comment that while Mr. Plamondon might have a complaint, it was an administrative matter not a question of privilege. He noted that there was more to the story than what had been said and that he was prepared to discuss the matter at another time. Mr. Plamondon attempted to pursue the matter on a point of order; however, the Speaker disallowed further comment.<sup>1</sup>*

*On April 9, 1991, Mr. Plamondon rose, again on a question of privilege, to repeat his claim that his privileges had been breached. The Hon. Lucien Bouchard (Lac-Saint-Jean) also spoke in support of the claim. The Speaker reiterated that the question raised by Mr. Plamondon was an administrative matter not one of privilege; however, he suggested that he could arrange a private meeting between himself, Mr. Plamondon and officials involved in the move in order to resolve the matter and added that Mr. Plamondon could "hold his place open on this question of privilege."<sup>2</sup>*

*On April 11, 1991, the Speaker made a brief statement to the House, which is reproduced in extenso below.*

## RESOLUTION

**Mr. Speaker:** I would like to make a brief clarification further to the statement by the honourable Member for Richelieu in the House yesterday and his question of privilege raised on Monday this week.

I first wish to inform the House of the successful meeting I had today with the honourable Member and with some officials who participated in moving his office. At that meeting, the honourable Member said he was completely convinced that at no time were his rights and privileges as a Member violated. It was recognized that such situations are exceptional and unique and it was regrettable if it caused him some concern.

Once again, I wish to thank the honourable Member for his confidence and co-operation in this affair.

***Postscript:** The Speaker then recognized Mr. Plamondon who expressed his thanks to the Speaker for meeting with him promptly and for publicly recognizing the unfortunate situation in which the Member had found himself. He confirmed that he had received assurances from legal counsel who had monitored the move that the security and confidentiality of his files were respected. While reiterating his objection to the original move as an unnecessary expenditure, he indicated that to spare further expense he had decided to stay in the new office assigned to him.*

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1. *Debates*, April 8, 1991, pp. 19126-7.
2. *Debates*, April 9, 1991, pp. 19232-3.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Access to parliamentary precincts: access by taxi of certain Members of Parliament to the Parliament buildings—*prima facie*

October 30, 1989

*Debates*, pp. 5301-2

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*Context: On October 30, 1989, the Hon. Herb Gray (Windsor West) rose on a question of privilege concerning the matter of access by taxi of certain Members of Parliament to the Parliament Buildings. Mr. Gray explained that at noon that day “several thousand Canadians” rallied on Parliament Hill to protest the Government’s Goods and Services Tax. Among them were a number of Members of Parliament and “several hundred taxi drivers who had driven to the Hill in a procession” in the hope that “they could drive their cabs around the driveway in front of the Parliament Buildings and out again.” The taxis however were prohibited from proceeding by a road-block of RCMP (Royal Canadian Mounted Police) cars near the Centennial Flame.*

*When Mr. Gray and several other MPs inquired of the officer in charge why they were not permitted to proceed in the taxi cabs, the officer indicated that he was acting on instructions; however, he refused to say who had given such instructions. Mr. Gray acknowledged that the RCMP officers were in all likelihood acting with the best of intentions, but he submitted that the incident raised the issue of parliamentary privilege.*

*In response to the Speaker’s request for clarification as to whether Members had been allowed to approach the building on foot, Mr. Gray affirmed that this had indeed been permitted. Other Members also intervened on the matter.<sup>1</sup>*

*The Speaker ruled immediately and his words are reproduced in extenso, below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Windsor West and others have addressed the Chair on a question of privilege. Basically, the fact, as explained here in the last number of minutes, is that indeed certain vehicles carrying Members of Parliament were stopped at least for a while.

There was also some suggestion that Members were denied access to the front door. I think that the honourable Member for Windsor West mentioned that. The honourable Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper) has made a suggestion which seems to be quite sensible. There is some difficulty with respect to jurisdiction outside the walls of these buildings and under the circumstances, I am going to find that there is a *prima facie* case and I would hope that the appropriate motion would be put.

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***Postscript:** The motion of Mr. Gray (Windsor West), seconded by Mr. Stan Keyes (Hamilton West), was immediately put and adopted without debate. Accordingly, it was ordered that the matter of access by taxi of certain Members of Parliament to the Parliament Buildings be referred to the Standing Committee on Elections, Privileges, Procedure and Private Members' Business. This Committee did not present a report to the House on this matter.*

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1. *Debates*, October 30, 1989, pp. 5298-301.

**PARLIAMENTARY PRIVILEGE****Rights of Members**

Conflict of Interest Code: Minister offended by remarks alleging breach of Code

May 5, 1987

*Debates*, pp. 5765-6

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**Context:** During Question Period on April 13, 1987, Mr. Michael Cassidy (Ottawa Centre) directed certain questions to the Government on whether the Minister of State for Fitness and Amateur Sport (Hon. Otto Jelinek) had violated the Conflict of Interest Code as it applies to Ministers by his handling of the sale of an interest in a small investment property in downtown Ottawa.

On April 14, 1987, Mr. Jelinek rose on a question of privilege arising out of the comments made by Mr. Cassidy. The Minister characterized the comments of the Member as "distorted information, half-truths and unsubstantiated innuendo" designed to "smear" his reputation. He noted that "this information and all other pertinent information [had] always been publicly available."

After the Minister's comments, Mr. Cassidy claimed that he believed the questions he had asked were legitimate in relation to conflict of interest and code of conduct guidelines for Ministers. Mr. Cassidy stated that while in his questions there had been no suggestion of illegality in the actions of the Minister, he felt there was a "substantial case" that the Minister was in breach of the Code of Conduct and he contended that if the actions taken by the Minister in this transaction were permissible under the Code of Conduct then changes in the code should be made. At a certain point, the Speaker intervened once again to indicate that the matter to be decided was whether the Member, through his questions, had meant to accuse the Minister of any wrongdoing. Mr. Cassidy responded that he was seeking information on the matter because he saw it as an important issue of public policy. Other Members also intervened on the matter.<sup>1</sup>

The Speaker indicated that he would carefully consider the arguments advanced. He returned to the House on May 5, 1987, to deliver the ruling reproduced, *in extenso*, below.

**DECISION OF THE CHAIR**

**Mr. Speaker:** I remind the House that a few days ago a question of privilege was raised in the House by the honourable Minister of State for Fitness and Amateur Sport respecting questions which were put by the honourable Member for Ottawa Centre.

I am now prepared to rule on the question of privilege raised on April 14 by the Minister of State for Fitness and Amateur Sport. In my opinion, the question raised affects the very nature of Members' rights and immunity.

I should say that we in this House are protected by absolute privilege in respect of everything we say on the floor of this Chamber. This is a difficult thing for the public to understand, and this is why I want to explain it carefully.

There are only two kinds of institutions in this land to which this awesome and far-reaching privilege extends—Parliament and the legislatures on the one hand and the courts on the other. These institutions enjoy the protection of absolute privilege because of the overriding need to ensure that the truth can be told, that any questions can be asked, and that debate can be free and uninhibited. Absolute privilege ensures that those performing their legitimate functions in these vital institutions of Government shall not be exposed to the possibility of legal action. This is necessary in the national interest and has been considered necessary under our democratic system for hundreds of years. It allows our judicial system and our parliamentary system to operate free of any hindrance.

Such a privilege confers grave responsibilities on those who are protected by it. By that I mean specifically the honourable Members of this place. The consequences of its abuse can be terrible. Innocent people could be slandered with no redress available to them. Reputations could be destroyed on the basis of false rumour. All honourable Members are conscious of the care they must exercise in availing themselves of their absolute privilege of freedom of speech. That is why there are long-standing practices and traditions observed in this House to counter the potential for abuse.

The privileges of a Member are violated by any action which might impede him or her in the fulfilment of his or her duties and functions. It is obvious that the unjust damaging of a reputation could constitute such an impediment. The normal course of a Member who felt himself or herself to be defamed would be the same as that available to any other citizen, recourse to the courts under the laws of defamation with the possibility of damages to substitute for the harm that might be done. However, should the alleged defamation take place on the floor of the House, this recourse is not available.

Honourable Members will remember that I commented some time ago that originally when the absolute privilege was extended to Members of Parliament, as applied to the British House of Commons in a different age when things said within that House would probably not be heard throughout the length and breadth of the kingdom, circumstances were very different. Today, as a consequence of television and electronic broadcasting, anything said in this place is said on the street right across this country, and that has to be borne in mind. In these circumstances a Member can be expected to claim a violation of his or her privileges and to argue the case very strongly. I point out that if a statement is made here or an innuendo is passed in here no Member can go to court for correction or damages, even though that statement is said outside this place the moment it is uttered here.

The Chair has a serious responsibility in such cases. The Chair of course does not resolve the question, only the House can do that. However, on the basis of the evidence available, the Chair must determine whether the question has priority over all other business. When the Chair so rules, a motion is moved and usually the question is referred to the Standing Committee on Elections, Privileges and Procedure. The Chair has a crucial role to play in this respect.

In the case before us certain questions were asked which, in the view of the honourable Minister, conveyed grave implications against his integrity and were, therefore, damaging to his reputation. That is the position which the Minister took. I have carefully examined the questions, together with the interventions which took place following the honourable Minister's statement, and I confess to be very troubled as a result.

Perhaps, as has been argued, the questions did not directly violate the practice of this House concerning the making of charges and the levelling of accusations. I remind honourable Members that I listened carefully to the questions and I did allow them. Nevertheless, I am sure all honourable Members can appreciate the honourable Minister's concern.

The House heard the Minister's statement. It is a long-standing tradition of this House that an honourable Member's word is accepted without question. Given all the circumstances in this case, I am sure that the Minister's capacity to function as a Minister and a Member of this House is in no way impaired. I point out to honourable Members that this is the real issue of privilege, although there are obviously other matters that surround the particular facts in this case, but the Chair has to look very carefully at the exact point of privilege.

With regard to the questions of which the Minister complained, legitimate though they may have been, I have already confessed to being troubled by their content. I would urge all honourable Members to take the greatest care when framing such questions. Questions concerning conflict of interest guidelines are, of course, legitimate. Members are entitled to use facts they have been able to obtain and verify as the basis for such questions.

I would remind the House, however, that a direct charge or accusation against a Member may be made only by way of a substantive motion of which the usual notice is required. This is another long-standing practice designed to avoid judgment by innuendo and to prevent the overextended use of our absolute privilege of freedom of speech. One of my distinguished predecessors, Mr. Speaker Michener, in a ruling of June 19, 1959, which has frequently been quoted in this House stated that this is a practice demanded by simple justice.<sup>2</sup>

I find therefore, again under the circumstances and after the most serious consideration of the evidence before me, that this matter should not take precedence over all other business. I would urge honourable Members to take great care in this Chamber with respect to the honour of each other.

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**Postscript:** On May 12, 1987, at the beginning of the day's proceedings, Mr. Cassidy asked leave to make a statement on this matter. The Member proceeded to place on record further information regarding the matter and explained that when he examined Mr. Jelinek's file, a key piece of information had been missing, namely a letter from the Assistant Deputy Registrar General offering written assurance that the transaction had been conducted in compliance with the code of conduct. Mr. Cassidy stated that he wished "to acknowledge that in connection with the Ottawa transaction, the Minister of State for Fitness and Amateur Sport did act honourably and did ensure that he was in compliance with the Code of Conduct for Ministers as it now stands." Mr. Jelinek thanked the Member for his statement. The Speaker thanked both Members for their conduct in this matter.<sup>3</sup>

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1. *Debates*, April 14, 1987, pp. 5124-34.
2. *Debates*, June 19, 1959, pp. 4929-32.
3. *Debates*, May 12, 1987, p. 5983.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Conflict of Interest Code: Minister offended by remarks alleging conflict of interest

May 26, 1987

*Debates*, pp. 6375-6

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**Context:** During Question Period on May 21, 1987, in directing a question to the Minister of Consumer and Corporate Affairs (Hon. Harvie Andre), Mr. Ian Waddell (Vancouver—Kingsway) indicated that he had in his possession a letter from a certain vice-president of Amoco Canada Limited, used in a campaign to raise “money for the Minister and his constituency association.” He then asked “will the Minister undertake to remove himself from any decision of his department or Cabinet regarding the proposed takeover of Dome Petroleum by Amoco?”

Immediately after Question Period, the Minister rose on a question of privilege. He alleged that the comments of the Member constituted a “direct implication” that because a member of the Minister’s riding association was employed by Amoco Canada, the Minister might be or was in conflict of interest in terms of taking any action with respect to the potential takeover of Dome Petroleum by Amoco Canada. The Minister indicated that no accusation of conflict of interest had been made. He maintained that in the face of an implication to that effect, Mr. Waddell should acknowledge that there is no conflict of interest; or, alternatively, to accuse him of a conflict of interest and have the matter referred to the Standing Committee on Elections, Privileges and Procedure.

Mr. Waddell contended that he had not accused the Minister’s constituent of any wrongdoing nor had he accused the Minister of a conflict of interest, he only asked the Minister “about the possibility of the appearance of a conflict of interest.” He claimed that it was “an inappropriate time for the Minister to have on his riding executive a fund raiser who has a high position in Amoco Canada” while the Minister may have to deal with this question either within his department or in Cabinet. Other Members also participated in the discussion.<sup>1</sup>

The Speaker reserved on the matter and delivered his decision, reproduced in extenso below, on May 26, 1987.

### DECISION OF THE CHAIR

**Mr. Speaker:** I am now ready to rule on the question of privilege raised by the honourable Minister of Consumer and Corporate Affairs on Thursday, May 21.

I have studied quite carefully the question which the honourable Member for Vancouver—Kingsway asked and about which the Minister complained, as well as the exchange which then followed. I am grateful to all honourable

Members who took part in the discussion, because they dealt with points which go beyond the narrow limits of a definite issue, points which interest us all considerably and which I shall deal with in this ruling.

In a previous ruling, which I delivered on May 5, I warned against the over extended use of our absolute privilege of freedom of speech. At the time, I said:

Questions concerning conflict of interest guidelines are, of course, legitimate. Members are entitled to use facts they have been able to obtain and verify as the basis for such questions.<sup>2</sup>

The question of the honourable Member for Vancouver—Kingsway was clearly related to conflict of interest, although he stated by way of a supplementary question that he was not suggesting that the Minister was in a conflict of interest situation. He did, however, in the course of his question, refer by name to an individual who was involved in fund raising for the honourable Member's constituency association. This led some of the honourable Members who participated in the discussion to express concern with regard to the potential for abuse of our absolute privilege of freedom of speech, particularly when individuals outside this House are referred to by name. It is not simply that such people could be slandered, with impunity, without any redress available to them, but that wrongdoing may be implied simply by making a personal reference.

The media are swift to report any matter which smacks of scandal or impropriety, and false impressions can be created, not necessarily intentionally, by reporting parliamentary questions of the kind put by the honourable Member for Vancouver—Kingsway to the honourable Minister of Consumer and Corporate Affairs.

I think I should repeat what I said before, that the absolute privilege of this place is something that is necessary for free speech. It is necessary because Members of Parliament have to be able to speak freely without fear. That, of course, is why we have this privilege and its history is clear. But we are living in a day when anything said in this place is said right across the country and that is why I have said before and why I say again that care ought to be exercised, keeping in mind that the great privilege we do have ought not to be abused.

The honourable Minister in raising his complaint, did so not only on his own behalf, but also in defence of the gentleman referred to in the question. The honourable Parliamentary Secretary to the Deputy Prime Minister (Mr. Doug Lewis) echoed this concern in referring to "the phrasing of questions which slander within the walls of the House not only the Minister but innocent people out there".

The honourable Member for Peace River (Mr. Albert Cooper) as Chairman of the Standing Committee on Elections, Privileges and Procedure, has a particular interest and concern in this fundamental area of our responsibilities and expanded on this aspect of the matter. Frankly, I appreciated his thoughtful

exposé of the problem, and the concern he expressed over what he described as “an evolving practice in the House of Commons of using names in here of people who are not Members of the House and, therefore, have no opportunity, no right and no chance to defend themselves.”

I am sure that all honourable Members would agree that we have a responsibility to protect the innocent, not only from outright slander, but from any slur directly or indirectly implied.

With the indulgence of the House, I should now like to refer to the issue of conflict of interest in the context of a Member’s relationship with those who are active in fundraising on behalf of his or her constituency association. These remarks, of course, can apply to the relationship between any Member and any person in a riding association of that particular Member having to do with whatever activity might be in support of that Member.

The honourable Minister for Consumer and Corporate Affairs freely acknowledged that some Members of his riding executive were employees of oil companies. He also said:

I suggest that there are in this Chamber over 100 Members who have farmers as members of their associations but who nevertheless regularly participate in agricultural debates and vote on agricultural measures. I submit that there are at least 30 Members opposite whose association memberships include union executives, and yet they regularly participate in discussions and votes pertaining to labour matters. In no such instance would it occur to me to suggest a conflict of interest.

Those are the words of the honourable Minister during the discussion on this particular point.

The honourable Member for Cape Breton—The Sydneys (Mr. Russell MacLellan) agreed with the Minister that members of oil companies are entitled to be members of his organization. The honourable Minister of State for the Canadian Wheat Board (Hon. Charles Mayer), in what I think can be said a forceful intervention, endorsed these views and pointed out that many of the members of his own riding executive were farmers. Presumably no one would contest the propriety of the inclusion of doctors on the riding executive of the Minister of National Health and Welfare (Hon. Jake Epp), of lawyers on that of the Minister of Justice (Hon. Ray Hnatyshyn), or of women on that of the Minister of State for the Status of Women (Hon. Barbara McDougall). *Reductio ad absurdum* perhaps, but I think this illustrates the point.

Before going into the question of privilege itself, I felt I had to express a few general considerations on the points connected with it. It is always useful to set guidelines and I feel that we should avoid as much as possible mentioning by name people who are unable to defend themselves in any context whatsoever against innuendos. I suggest also that in the absence of any concrete evidence, we should

avoid suggesting that there might be a conflict of interest simply because a member of a county association [riding] is involved in an activity of some sort or is a member of a given profession.

I come now to the complaint of the honourable Minister of Consumer and Corporate Affairs. I have already stated that questions concerning conflict of interest guidelines are legitimate, and I did not rule out of order the question of the honourable Member for Vancouver—Kingsway. The honourable Minister, nevertheless, saw in the question an implied slur against himself and another individual named in the question. The honourable Member for Vancouver—Kingsway assured the House that he made no accusation either against the Minister or the other person. His assurance was quite unequivocal, and I must take this into account. In addition, the Minister's direct and forthright statement, and the contributions to the discussion made by other honourable Members, satisfy me that the Minister's reputation has suffered no damage and that no one is likely to question his integrity.

I, therefore, find that I cannot accord this matter precedence over other business. However, I would again remind the House that while questions concerning conflict of interest guidelines are legitimate, great care should be taken in framing them. I would particularly exhort honourable Members to avoid referring by name to persons who do not enjoy our immunities. There may, from time to time, be exceptional circumstances in which the national interest calls for the naming of an individual. Such circumstances are rare, however, and I am sure that none of us would wish to take the slightest risk of harming an innocent person.

I would, however, like to add something. As I indicated before, matters like this are giving the Chair considerable difficulty. Of course, the Chair must, when a question of privilege is taken arising out of questions which offend someone, keep in mind that the question I have to decide, on a question of privilege, is whether or not the question has reduced the capacity of the honourable Minister to do his or her duty as a Member of this place. That is the narrow question I have to face, and in this case I have no hesitation in saying that, as a consequence of the questions and the exchange that followed, the honourable Minister's integrity is left without any question at all.

In my view, there has been no damage done to the honourable Minister. As I have said, no Minister could have made a more frank response to the alleged innuendo of the question. Free speech in this place is dependent upon order. It is very important, especially when considering the extraordinary privileges we all enjoy here, that a lot of common sense be used.

I also want to say something else. I said the other day that the Opposition has the undoubted right to ask questions and to probe, and I also said that the Opposition has the undoubted duty to do so. I do not think there is any student of parliamentary history who would quarrel with that affirmation. I intend to be very vigilant in ensuring that those rights and duties are properly protected in this

place. However, if ever there is an occasion when a Member feels very strongly that something should be revealed here, then I would ask that honourable Members pursue that particular issue through a fact-finding mission of some care. If it is not required to do so in this place, then the appropriate procedure is to lay a charge and there are procedures under our rules providing for that.

In the interests of order, common sense and some concern for each other, I would ask all honourable Members to be extremely careful on these matters. I thank all honourable Members for their interventions the other day which, frankly, I found helpful.

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1. *Debates*, May 21, 1987, pp. 6299-306.
2. *Debates*, May 5, 1987, p. 5766.

**PARLIAMENTARY PRIVILEGE****Rights of Members**

Conflict of Interest Code: Parliamentary Secretary offended by insinuation of conflict of interest

December 11, 1991

*Debates*, pp. 6141-2

**Context:** *On December 3, 1991, after having his question of privilege postponed on two occasions<sup>1</sup> due to the absence of the other Member involved, Mr. John MacDougall (Parliamentary Secretary to the Minister of Energy, Mines and Resources) rose on a question of privilege regarding comments made by Mrs. Diane Marleau (Sudbury) during Question Period on November 28, 1991. The question dealt with a tendering process regarding the construction of a federal building.*

*In a question to the Government, Mrs. Marleau had stated: "I want to know the real reason behind this nonsense. Is it because the owner of the second site and the Member for Timiskaming (Mr. MacDougall) just happen to be brothers-in-law?"<sup>2</sup>*

*The Parliamentary Secretary responded that this was not the case. He noted that these allegations "have caused damage to myself, my family and the riding of Timiskaming." He then related to the House his knowledge of the tendering process.*

*In response, Mrs. Marleau gave her version and understanding of the events. Included in her submission was the statement: "I do not for one minute infer any wrongdoing on the part of the honourable Member, absolutely none."<sup>3</sup> The Speaker reserved on the matter.*

*On December 11, 1991, he delivered a ruling which is reproduced in its entirety below.*

**DECISION OF THE CHAIR**

**Mr. Speaker:** After having co-operated with the Chair and twice postponing his question of privilege, the honourable Member for Timiskaming rose on Tuesday, December 3, 1991 to protest certain comments made in the House by the honourable Member for Sudbury in an exchange which took place during Question Period on Thursday, November 28, 1991.

On that date, the honourable Member for Sudbury asked the Parliamentary Secretary to the Minister of Public Works (Mr. Dave Worthy) a question concerning the termination of a contract for the construction of a veterans affairs building in Kirkland Lake.

The Parliamentary Secretary responded, and then in a supplementary the honourable Member for Sudbury put the question:

I want to know the real reason behind this nonsense. Is it because the owner of the second site and the Member for Timiskaming just happen to be brothers-in-law?

That was denied by the Parliamentary Secretary to the Minister of Public Works.

The *Debates* shows that someone then shouted out: "It sure helped the brother-in-law" and another honourable Member said: "All in the family".

As I explained to the House on Tuesday last, I am concerned not only with the question raised by the honourable Member for Sudbury but also with the mood that was created by that question. The Chair has to decide whether that question and those comments are merely out of order or whether they constitute a question of privilege.

The honourable Member for Timiskaming was given quite a full opportunity on Tuesday last to respond to what he termed "allegations which have caused damage to myself, my family and the riding of Timiskaming".

The honourable Member for Sudbury, for her part, has stated in response to the Member for Timiskaming, and this is important, and I quote: "I do not for one minute infer any wrongdoing on the part of the honourable Member, absolutely none".

Our jurisprudence is fairly clear in this regard. There has been no direct charge against the honourable Member for Timiskaming raised by the honourable Member for Sudbury and any inference to this effect has been categorically denied by the honourable Member for Sudbury.

On the narrow issue then of whether a question of privilege can be found on this basis, the Chair cannot decide in the affirmative.

There is, however, a more troubling aspect to this whole matter. It lingers and has a suffocating effect on fair exchange in this place. That is that once certain words are uttered, it is very difficult to retract them. The honourable Member for Timiskaming referred in his comment the other day to the hurt that the remarks made in the Chamber had caused him, his family and his constituents and he pleaded that in fairness: "We should once and for all be able to clear such allegations and not allow them to happen".

In coming to a decision on this question of privilege, the Chair is somewhat consoled by the fact that an opportunity to clear the issue has taken place. Prevention is more difficult to address. When certain words are uttered in this place, they receive wide and instant dissemination. Quite frankly, they leave an impression. The words may later be retracted, the inferences or offence the occasion caused may be withdrawn, denied, explained away, or apologized for. However, the impression is not always as easily erased.

The Chair has on numerous occasions in the past urged honourable Members to respect the conventions and traditions of this place and to conduct themselves with the civility becoming representatives of their constituents. That type of civilized conduct should encompass not only interventions in debate but also questioning, statements and even those types of comments usually attributed in the official debates to: "some honourable Members".

The Chair wishes to emphasize that a major element of this civilized conduct consists in refraining from personal attacks. There is good reason for this. First of all, in a general sense, respect for the person is the building block upon which our society is structured. Secondly, few things can more embitter the mood of the House than a series of personal attacks, for in their wake, they leave a residue of animosity and unease.

Accordingly the prohibition against personal attacks in our Chamber is fundamental to maintaining order in this House. That is why my predecessors and I have so frequently in the past interrupted when personal attack seemed imminent.

However, while the Chair is granted many powers, it is not omniscient and cannot predict what course debate or questioning or interventions will take. Accordingly, in the final analysis the Chair must depend on the responsible attitude of each honourable Member.

Statements are made here to attract attention: the attention of the House; the attention of one's constituents; the attention of the media and the public at large. It is simply disingenuous to pretend that Members do not realize the potential impact of their words on the audience they reach.

The Chair can devise no strategy, however aggressive or interventionist, and can imagine no codification, however comprehensive or strict, that will as successfully protect the Canadian parliamentary traditions that we cherish as will each Member's sense of justice and fair play. Especially at this time of crisis of confidence in our parliamentary institutions, our constituents deserve and will tolerate no less.

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1. *Debates*, November 29, 1991, p. 5547; December 2, 1991, p. 5648.
2. *Debates*, November 28, 1991, p. 5508.
3. *Debates*, December 3, 1991, pp. 5682-4.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Oath/affirmation of allegiance: Member's right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath

November 1, 1990

*Debates*, pp. 14969-70

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**Context:** *Bloc québécois member Gilles Duceppe was the successful candidate in the August 13, 1990 by-election in the Montreal riding of Laurier—Sainte-Marie. Mr. Duceppe was the first Member to be elected to the House of Commons as a Member of the Bloc québécois. Mr. Duceppe took the oath of allegiance and signed the Test Roll on August 27, 1990. Three weeks later, on Sunday, September 23, 1990, in a ceremony held at the City Hall in Hull, Quebec, Mr. Duceppe swore his loyalty to the people of Quebec and vowed to fight for Quebec sovereignty. The ceremony received substantial media coverage and was the subject of considerable comment.*

On October 2, 1990, Mr. François Gérin (Mégantic—Compton—Stanstead) rose on a question of privilege to complain that during debate Mr. David Dingwall (Cape Breton—East Richmond) had referred to Members of the Bloc québécois as having renounced their oath of allegiance to the Queen. Mr. Gérin argued that the fact that Bloc Members stood for constitutional reform did not signify "that we reneged on our allegiance in any way."

Messrs. Dingwall and Nelson Riis (Kamloops) both spoke to the question, denying that there was any breach of privilege involved. Mr. John Nunziata (York South—Weston) then intervened and queried what exactly the oath of allegiance means.

The Speaker indicated that the immediate issue which he would consider was that "an honourable Member has said that what was said by another honourable Member is a breach of his privileges." He then said that he would review the "blues" and return to the House and that it would not be appropriate to deal with the matter of the oath on this particular point of privilege.<sup>1</sup>

Mr. Jesse Flis (Parkdale—High Park) rose on a question of privilege on the following day, October 3, 1990. He spoke of the requirement for each Member to take the oath of allegiance prior to taking his or her seat in the House and complained that, "when someone else sitting in this Chamber now takes that same oath and then goes and washes his or her hands of this oath, this oath has very little meaning to every Member sitting in the House." He requested the Speaker to look into and rule on the matter or refer it to committee "because it undermines the role of every member in the House." The Hon. Jean Lapierre (Shefford), a Member of the Bloc québécois, responded at some length on a Member's right to sit in the Chamber and the right to freedom of expression.

*Mr. Duceppe then rose to demand the withdrawal of certain comments made by Mr. Nunziata and to clarify his position, indicating that: “We [the Bloc québécois] insisted that it is with the utmost respect for Canadian Parliamentary institutions that we are sitting here, while insisting that we would strive to achieve Quebec’s sovereignty as soon as possible.” Other Members also intervened on the matter.<sup>2</sup>*

*The Speaker took the matter under advisement and on November 1, 1990 delivered his ruling, reproduced *in extenso* below, which addressed not only Mr. Flis’ question of privilege but many of the issues under discussion.*

### DECISION OF THE CHAIR

**Mr. Speaker:** On Wednesday, October 3, 1990, the honourable Member for Parkdale—High Park rose on a question of privilege concerning the meaning of the Oath of Allegiance taken by all duly elected Members and the duties and obligations of Members relating thereto.

The Chair undertook to consider the matter carefully and to return to the House. I am now prepared to rule on the matter. The ruling I am about to deliver will touch not only on the question of privilege raised by the honourable Member for Parkdale—High Park, but on other important issues raised by other honourable Members during the discussion which ensued.

Let me preface my decision by saying that as your Speaker I am well aware of the importance of this matter, not only to honourable Members but to constituents across the country. Events of recent months have once again sharpened the focus of the Canadian public on the Members of this Chamber and the role they play in Parliament. Many constituents have contacted their Members of Parliament to express their views, and though their views may differ and differ sharply, the passion with which they hold those views is striking. Indeed, it is precisely because these views are so passionately held that the real issues can sometimes be obscured. The Chair hopes today to clarify the situation for honourable Members and perhaps no less importantly, for the public who are watching us.

First, the Chair will deal with the precise point at issue, namely the validity of the Oath of Allegiance taken by the honourable Member for Laurier—Sainte-Marie.

As all honourable Members are aware, Section 128 of the *Constitution Act, 1867* requires all Members of Parliament to take an Oath of Allegiance to Her Majesty the Queen or to make an affirmation in lieu thereof before being allowed to sit or vote in the House of Commons. The wording of the oath dates back to 1867 and derives from the oath then used in the British Parliament. It reads as follows:

I ...

—and the person's name is given—

... do swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth II.

I point out that that is the oath and it is limited to these very brief words.

Thus, the taking of the Oath is a constitutional requirement and only those Members who have taken and subscribed to the oath are allowed to take their seats in the House of Commons.

As Beauchesne pointed out in the Fourth Edition of his *Rules and Forms of the House of Commons of Canada*, Citation 16(1):

It is not the oath that makes a person a Member of the House. He must be a Member before being sworn in.... The object of the oath is to allow the Member to take his seat in the House.

On August 27, 1990, the honourable Member for Laurier—Sainte-Marie duly elected by his constituents on August 13, made a solemn affirmation and signed the Test Roll. In so doing, like all other honourable Members, he became entitled to take his place in the House and on September 24, 1990, when the House resumed sitting, the honourable Member was introduced and took his seat.

The current controversy springs from events of September 23, 1990. On September 23, the honourable Member for Laurier—Sainte-Marie made another statement outside this Chamber expressing his loyalty to the people of Québec. This statement, as the honourable Member for Shefford has pointed out, is very similar to one of two oaths taken by Members of the National Assembly of Québec. The honourable Member for Shefford sees no contradiction there. He argues, "... *l'un n'empêche pas l'autre.*"

But this viewpoint is not universally shared. Others contend—contentions that have been fuelled by media reports and commentary—that the events of September 23 cast doubt on the legitimacy of the oath taken August 27.

Your Speaker is not empowered to make a judgment on the circumstances or the sincerity with which a duly elected Member takes the oath of allegiance. The significance of the oath to each Member is a matter of conscience and so it must remain.

The honourable Member for Laurier—Sainte-Marie has stated very clearly in this House that he has in no way repudiated the oath of allegiance he took on August 27. The honourable Member said:

I never mocked the Canadian Parliament nor the Queen. I swore the oath of allegiance with all due regard for the democratic institution that the Canadian Parliament is.

Whatever construction the media has put on the situation, whatever the perception or misperception of the events of September 23, it is a fundamental principle and long-established convention of the House to accept as true the word of an honourable Member. The Chair must therefore conclude that there has been no breach of privilege or contempt.

That being said, it is important to view this situation in its entirety. The honourable Member for Laurier—Sainte-Marie has been unambiguous on his perspective and that of his colleagues:

We insisted that it is with the utmost respect for Canadian Parliamentary institutions that we are sitting here, while insisting that we would strive to achieve Quebec's sovereignty as soon as possible.

As the honourable Member for Cape Breton—East Richmond has eloquently stated, the fact that an honourable Member holds views which are vigorously opposed by other honourable Members can in no sense be allowed to detract from his right to present them.

A historical perspective on parliament here in Canada and in Great Britain reveals ample precedent for the presence in the House of duly elected Members whose ultimate goal may be at odds with, even inimical to, the constitutional *status quo*.

Only the House can examine the conduct of its Members and only the House can take action if it decides action is required. Should the House decide that an honourable Member has in some way committed a contempt, then it is for the House to take the appropriate steps.

The Chair wishes to thank all honourable Members who participated in the discussion of these important matters. The freedom of all Members of this House to represent their constituents and to perform their duties is a cherished right. The Chair hopes that the airing of these issues has helped to clarify the situation so that the work of the House can carry on in the best traditions of this place. I thank honourable Members.

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1. *Debates*, October 2, 1990, pp. 13694-5.
2. *Debates*, October 3, 1990, pp. 13736-42.

**PARLIAMENTARY PRIVILEGE****Rights of Members****Political affiliation: designation in records of the House**

December 13, 1990

*Debates*, pp. 16705-6

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**Context:** *On September 26, 1990, Mr. François Gérin (Mégantic—Compton—Stanstead) rose on a question of privilege to request that corrections be made to various lists of committee members, to the official records of the House and to the electronic listing of Members. Mr. Gérin stated that although he had on May 18, 1990 terminated his affiliation with the Progressive Conservative Party, various listings of Members still connected him with that party. The Speaker assured the Member that the necessary corrections would be made.*

*Mr. Gérin then requested that corrections be made to reflect his new affiliation with the Bloc québécois. The Hon. Jean Lapierre (Shefford) supported the Member's arguments and added that members of the Bloc québécois, in addition to being designated as such in the records of the House, also sought to be recognized in terms of the House's various proceedings and ministerial statements. At that point, Mr. Jim Hawkes (Chief Government Whip) and other Members suggested that the matter be referred to the Standing Committee on Privileges and Elections. However, the Speaker while agreeing that referring the matter to that Standing Committee might "very well be the most sensible approach," commented that a number of issues had been raised and that the terms of reference to the committee had to be quite clear. For that reason, the Speaker suggested that the matter be adjourned until Members had an opportunity to discuss it among themselves. Mr. Gérin agreed.<sup>1</sup>*

*On October 1, Mr. Gérin rose under the guise of a point of order to give notice of his intention to resume his application on the following day after Question Period.<sup>2</sup> However, discussion on this particular question of privilege was never resumed in the House.*

*On October 10, Mr. Jack Shields (Athabasca) rose on a point of order to seek clarification as to how Members from the Reform Party and the Bloc québécois were being recognized in the House.<sup>3</sup> The Speaker indicated that the matter was under advisement.*

*On November 21, Mr. Pat Nowlan (Annapolis Valley—Hants) was recognized on "a point of personal privilege" and requested that henceforth he be recognized and listed in House records as an "Independent Conservative." After brief interventions from other Members, the Chair indicated that the matter had been raised before, was under discussion and would hopefully be resolved soon.<sup>4</sup>*

*Mr. Nowlan rose again on December 10 to discuss the question of the status of the independent Member and to demand recognition as an "Independent Conservative." Other Members also participated in the discussion.<sup>5</sup> The Speaker summarized their remarks in his decision rendered on December 13, 1990 and reproduced in extenso below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Annapolis Valley—Hants rose on November 21, 1990 to declare that he was and wanted to be known as and registered in our records as an Independent Conservative.

The honourable Member for Calgary West (Mr. Jim Hawkes) intervened to make the point that in the Appendix to Wednesday's *Debates* Members are listed by affiliation to parties recognized under the *Canada Elections Act* or as Independents, with no other possibilities in terms of that listing.

The Chair then indicated that the matter was the subject of discussion outside the Chamber and expressed the hope that it could be satisfactorily resolved.

Our further discussions on this matter were neither conclusive nor determinant of the issue. Before the Chair could so report back to the House, the honourable Member for Annapolis Valley—Hants again rose on December 10, 1990 to press for recognition as an Independent Conservative.

In his passionate appeal to the House, the honourable Member referred us to numerous precedents where Members having been elected under one label declared themselves under another affiliation and were so recognized.

He maintained that the political system in this country is based on the election of individuals whose party affiliation is incidental. The honourable Member for Calgary West continued to insist that to invent a political affiliation which did not exist under the *Canada Elections Act* and to request the Parliament of Canada to approve the designation of that political affiliation in its written records when it does not exist as a label one can use in running for election in this country would be a serious mistake.

The honourable Member for Kingston and the Islands (Mr. Peter Milliken) submitted that the honourable Member for Calgary West was seeking to alter the rules under which we have operated here by reference to changes in the Elections Act made in the 1970s. He concluded that based on precedents it would be entirely proper for the honourable Member for Annapolis Valley—Hants to choose his designation and insist that it be inserted in the Wednesday listing as an Appendix to *Debates*.

The Chair concluded the exchange by asking if any Member could advise the Chair if there was any legal impediment against the honourable Member calling himself an Independent Conservative in the House. None was identified.

The Chair promised to return to the House with a reasoned response and is prepared to do so now.

It is perhaps paradoxical that the political affiliation of an honourable Member, which is so fundamental to his or her self-definition is, in our official records, given only marginal expression. As far as this House is concerned, a Member is designated by political affiliation only in the weekly appendix to *Debates*, and only in appendices to *Journals* and the bound volumes of *Debates*. There are, of course, other applications of these designations as, for example, in the electronic Hansard or in miscellaneous listings of Members of the House. However, these applications might be described as derivative in that they depend upon or are drawn from the listing which appears in the weekly appendix to *Debates*. Therefore, the designation of political affiliation in *Debates* must be the primary focus.

With very great respect to those who maintain an opposite view, the Chair must advise that it can find no prescription limiting the designations inserted under political affiliation in the Appendix to *Debates* to those parties officially recognized as such pursuant to the *Canada Elections Act*.

The absence of such a limiting prescription must be weighed against the combined weight of our past practice in this regard and our long-standing tradition of respecting the word and legitimate demands to self-definition of individual Members.

Having tried to perform this balancing act in the present instance with very great attention and care, the Chair is persuaded to yield to the request of the honourable Member for Annapolis Valley—Hants and accordingly hereby directs that he be listed as an Independent Conservative in the weekly Appendix to *Debates*, in the Appendices to the bound volumes of *Debates* and *Journals*, and in any documents or circumstances consequential to those Appendices.

I recognize that this was not necessarily a particularly easy decision to make, but I hope that it meets, after the long discussion that took place, with the approval of the Members of the House.

*Postscript: Shortly after the Speaker's ruling on Mr. Nowlan's question of privilege, Mr. Lapierre rose on a point of order to ask for guidance on the procedure to formally advise the House of his and other Members intention to be designated as Members of the Bloc québécois. The Speaker referred the Member to the Table Officers.<sup>6</sup> (The internal administrative system set up required a written notification to the Clerk of the*

*House of the wish of the Member to be redesignated. This arrangement is not mentioned in the official records of the House.)*

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1. *Debates*, September 26, 1990, pp. 13456-9.
2. *Debates*, October 1, 1990, p. 13633.
3. *Debates*, October 10, 1990, p. 13987.
4. *Debates*, November 21, 1990, pp. 15526-9.
5. *Debates*, December 10, 1990, pp. 16493-9.
6. *Debates*, December 13, 1990, p. 16707.

**PARLIAMENTARY PRIVILEGE****Rights of Members**

Political affiliation: request for research funds for the Bloc québécois

December 13, 1990

*Debates*, pp. 16703-4

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**Context:** *On November 26, 1990, the Hon. Jean Lapierre (Shefford) rose on a point of order to indicate that it had been several months since Members of the Bloc québécois had sent a request to the Speaker and the Board of Internal Economy for research funds, to which they had not yet received a reply. The Speaker indicated that it might well be that a reply had been sent to the Member but that he had not yet received it.*<sup>1</sup>

*On November 27, Mr. Lapierre rose on a question of privilege on the same subject. He explained that on behalf of the Board, the Speaker responded to the request for research funds for the Bloc québécois and its Leader, by sending him a letter informing him that the Board had considered the proposal and “deemed it impossible to approve the allocation of funds for the time being.” Mr. Lapierre argued that this response was unsatisfactory because no reason was given for the refusal and he sought clarification on a number of phrases in the text. He claimed that the Board of Internal Economy through its rules was imposing a “tyranny of the majority.”*

*The Speaker intervened to indicate the points raised were directed “to the administration of this place.”*

*Mr. Lapierre concluded that to fully carry out his responsibilities as the Member for Shefford, he needed the same rights and privileges as other Members of the House. He beseeched the Speaker to reverse the Board’s decision, and should he refuse, to “at least have the decency to explain why.” After hearing a brief intervention from Mr. Ian Waddell (Port Moody—Coquitlam), the Speaker took the matter under advisement.<sup>2</sup>*

*The matter was again raised by Mr. Lapierre on December 12. Quoting from two newspaper articles, Mr. Lapierre claimed that the Hon. André Ouellet (Papineau—Saint-Michel) and Mr. Jean-Pierre Hogue (Outremont) had made available to four individuals from the business sector certain research services of the House. These individuals were, with Mr. Ouellet and Mr. Hogue, members of the Commission on the Political and Constitutional Future of Quebec (Bélanger-Campeau Commission).*

*Mr. Lapierre argued that his privileges, and those of his colleagues of the Bloc québécois, had been breached in that they were denied research funds by the Board of Internal Economy while unelected citizens from the private sector were given access to the research services of the House. Mr. Lapierre contended that the actions of Mr. Ouellet and Mr. Hogue were contrary to the Standing Orders and the practices of the House.*

*Mr. Lapierre also raised another matter, which he argued constituted discrimination against the Hon. Lucien Bouchard (Lac-Saint-Jean). According to Mr. Lapierre, staff from the Privy Council Office were made available to Mr. Ouellet and Mr. Hogue to collect objective data. Yet this data had not been made available to Mr. Bouchard, who also sat on the Bélanger-Campeau Commission.*

*The Speaker responded by noting that part of Mr. Lapierre's complaint pertained to a subject matter the Chair was currently studying and concluded that he would look at Mr. Lapierre's intervention and take it into account before bringing down his ruling "on the other matters" that had been raised.<sup>3</sup>*

*The Speaker's decision delivered on December 13, 1990 is reproduced in its entirety below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** On Tuesday, November 27, 1990, the honourable Member for Shefford raised a question of privilege related to a request he had submitted to the Board of Internal Economy to fund research for his group and to fund the office of the leader of the group. As Chairman of the Board of Internal Economy, I wrote to the honourable Member to inform him of the Board's decision.

The honourable Member had read the letter into the record and went on to challenge the fairness of the Board's decision, arguing with some vigour that "all honourable Members should be treated the same" and that he and his colleagues must have the same rights and privileges as any other member in this House. The honourable Member concluded with these words "... I beseech you to reverse your decision and if you refuse, you should at least have the decency to explain why."

These are strong words indeed. It appears to me that in presenting his impassioned case for additional funding for his group, the honourable Member for Shefford has implied that the Chair has dealt in a high-handed and unfair manner towards certain Members of this House. Furthermore, his words leave the entirely erroneous impression that the independent Members in his group are being discriminated against.

As your Speaker, I cannot allow these erroneous impressions to stand unchallenged for they cast doubt on the impartiality of the Chair and risk tarnishing the whole House with the brush of unfairness.

First, let me state clearly that Board decisions are made by the Board of Internal Economy, not by your Speaker. As Speaker, I am the Chairman of that Board and I preside over the deliberations of Members, from all sides of the House, who sit as voting members of the Board. These include the Deputy Speaker (Hon. Andrée Champagne), the honourable Government House Leader (Hon. Harvie Andre), the honourable President of the Treasury Board (Hon. Gilles Loiselle), the House Leader of the Official Opposition (Mr. Jean-Robert Gauthier), the House Leader of the New Democratic Party (Mr. Nelson Riis), the

Chief Government Whip (Mr. Jim Hawkes), the Whip of the Official Opposition (Mr. David Dingwall), and the honourable Member for Lachine—Lac-Saint-Louis (Hon. Bob Layton).

The Board considered the request made by the honourable Member for Shefford that additional funds be made available to his group for research and for the office of the leader of the group. The Board decided not to make an exception in this case and not to make additional funds available at this time. The Board could have decided differently. For the moment, the decision stands and I can only reaffirm it.

That being said, however, it is important to note that the decision does not mean that the members in this group are impeded from full participation in the work of the House or that they are being deprived of support necessary to represent their constituencies adequately. The honourable Member for Shefford argues that the nine independent Members for whom he speaks require additional resources. Each Member of this House receives a global budget which covers basic staff salaries, normal operating expenses of a constituency office, and related travel expenses. It is important to note that each of these Members, like every other Member of the House, enjoys the full flexibility to assign these financial resources as he sees fit. For example, under their global allocation, most Members of the House will employ up to five staff persons to whom they assign research or administrative duties either in Ottawa or in the constituency, as they judge appropriate. The global budgets of these nine members taken together total close to \$1.5 million.

In addition to the global budget, the House provides each Member with a fully funded Ottawa office and coverage of important ancillary costs like telephone, postage, printing and travel. Such then is the level of support that the House of Commons offers to each and every individual duly elected to serve as a Member of Parliament. It is in this context that the case of the honourable Member for Shefford should be viewed.

One can well understand the reasons the honourable Member for Shefford may have for pressing the Board of Internal Economy to recognize himself and his colleagues as an entity and to grant them additional funds accordingly. To date, these efforts have proven unsuccessful, but it is a long and dangerous leap to conclude from there that the basic rights and privileges of those Members are somehow being abrogated.

A search of the *Debates* will show, on the contrary, that the honourable Member for Shefford and his colleagues have been extended every courtesy by this House and that the Chair has safeguarded their participation in ways that are fully in keeping with our procedure and practices.

In Question Period the group was recognized for questions immediately on the return of the House in September and have since been recognized most days when they sought to question the government or to make statements pursuant to S.O. 31.

These brief remarks have sought to explain to all honourable Members and to the public who are watching the House of Commons funding of an infrastructure supporting the honourable Member for Shefford and his colleagues. I trust that they will dispel any incorrect perceptions about the situation, and clarify that the support and funding available to every private Member of whatever political persuasion is fully available to Members who have identified themselves as the Bloc québécois.

There are profound differences of opinion as to the best solution to the political and constitutional dilemmas we now face. The depth of the conviction with which these opinions are held and the very complexity of the issues before us make for a highly volatile situation. The Chair pledges to do its utmost to continue to serve this House in as even-handed and impartial a manner as possible. Meanwhile I ask for the continued co-operation of all honourable Members so that, however vigorous and hard-fought our political battles, the work of this place will reflect the seriousness and the civility our constituents have a right to expect.

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1. *Debates*, November 26, 1990, pp. 15716-7.
2. *Debates*, November 27, 1990, pp. 15799-801.
3. *Debates*, December 12, 1990, pp. 16636-7.

## PARLIAMENTARY PRIVILEGE

### Rights of Members

Member's right to sit in the House of Commons: inquiry as to course of action to follow upon announcement of conviction of a Member of Parliament on charges of fraud

December 11, 1992

*Debates*, pp. 15083-4

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**Context:** *On December 10, 1992, Mr. Maurice Tremblay (Lotbinière) was found guilty of fraud, false pretence, and fraud in relation to his functions as a Member, and was scheduled to be sentenced on January 25, 1993.*

*On December 11, 1992, Mr. Nelson Riis (Kamloops) rose on a question of privilege concerning the news of Mr. Tremblay's conviction for misuse of House of Commons funds. Mr. Riis claimed that in cases where Members are convicted in court, the expectation is that the Member should resign his or her seat, and he requested information from the Government as to whether the Member had already resigned. He also asserted that it was House tradition to have convicted Members disciplined by the House in addition to the discipline "meted out by the courts", and he sought the Speaker's guidance as to the course of action to be taken.*

*The Rt. Hon. Joe Clark (President of the Privy Council and Minister Responsible for Constitutional Affairs) suggested that it would be appropriate to allow the court processes to be carried through to their conclusion and remarked upon the importance of respecting the difference between the political function of the House and the functions of the court. Mr. David Dingwall (Cape Breton—East Richmond) informed the House that as sentencing in the case would not occur until the new year and as an appeal might be pending, it would not be appropriate to proceed with the matter at the present time. Mr. Riis rose again to clarify that he was not advocating hasty action; rather he was seeking clarification as to the correct course of action to follow.<sup>1</sup>*

*The Speaker addressed the matter immediately and his words are reproduced in extenso below.*

## DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Kamloops has raised a matter which of course is of importance to this House. The right honourable minister has responded on the government side and the honourable Member for Cape Breton—East Richmond on behalf of Her Majesty's Loyal Opposition.

The matter raised is the announcement of the conviction of a Member of Parliament for certain offenses.

There is a convention which I expect would be followed. That is that the court will inform the Chair officially of what has transpired. I do not anticipate receiving that this morning or maybe not even for some days.

The other matter referred to is the question of an appeal. I am not in a position, nor I suppose are honourable colleagues, to know whether an appeal would be taken. I think we should look carefully at that.

Again, we do not know what is likely to transpire at the sentencing or what arguments may be used by the defence at that time, all of which would affect whatever action this place might ultimately take.

We had a matter like this some years ago. Honourable Members will remember that I took the matter under advisement to consider my position and to consider what was appropriate under the circumstances. As it turned out, the matter was resolved without the necessity of the Chair having to make any ruling at all.<sup>2</sup>

However, the honourable Member for Kamloops has, as he said, brought this matter to the attention of the House at the first possible opportunity. If I understood him correctly, he is not suggesting that the House should take any sudden action today, but when it is appropriate under all the circumstances.

I will take the application of the honourable Member under advisement. As soon as I am in a position to advise the House further I shall do so.

*Postscript: The matter was not raised in the House again.*

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1. *Debates*, December 11, 1992, pp. 15083-4.

2. *Debates*, May 30, 1989, p. 2321. On May 23, 1989, Mr. Richard Grisé (Chambly) pleaded guilty to and was convicted of various charges of fraud and breach of trust. On May 25, Mr. Svend Robinson (Burnaby—Kingsway) rose on a question of privilege to argue that Mr. Grisé should be expelled from the House of Commons since his actions constituted a contempt of the House. The Hon. Herb Gray (Windsor West) spoke in support of that argument while the Hon. Doug Lewis (Minister of Justice and Attorney General of Canada) argued that the question of privilege had been raised prematurely, since either Mr. Grisé or the Crown could still appeal the terms of probation or the fine. The Chair noted that while it had anticipated and already considered many of the arguments presented, it was appropriate under the circumstances to reserve on the matter (*Debates*, May 25, 1989, pp. 2119-29). On May 30, 1989, the Speaker announced a vacancy in the electoral district of Chambly and read out Mr. Grisé's letter of resignation to the House.



## CHAPTER 2 — ARRANGING THE BUSINESS OF THE HOUSE

### Introduction

Since Confederation, the Standing Orders of the House have, generally speaking, provided a common, but not necessarily comprehensive, framework for the conduct of parliamentary business on a given sitting day. Members during each Parliament become accustomed to proceeding in a regular fashion and with little dissension on the order in which various items are called, and are generally agreed on what proceedings then occur concerning those items of business. Many, but not all, of the items are listed in the Standing Orders and/or on the *Order Paper*, and the Chair Occupants, on their own initiative, do not depart from the usual manner of proceeding.

Within the context of the substance and the precedence of the items being called, however, the Standing Orders and practice permit attempts, through motions moved without notice and adopted or rejected without debate in a number of cases, to effect changes to the regular manner of proceeding. If successful, this affects, understandably, the sequence of business on any given day. When contentious issues are being debated or when particular parliamentary proceedings (such as the introduction of a bill or the moving of a time allocation motion) are anticipated, the Members may attempt to affect the regular routine either by delaying or, alternatively, expediting the desired “result”. The Chair Occupants are then required to determine the admissibility of the attempt, in other words to rule on whether procedurally the manoeuvre is in order.

During Speaker Fraser’s term, he was called upon to make a number of key rulings on attempts to influence the sequence and precedence of parliamentary business, particularly with reference to events surrounding the introduction and legislative progress of Bill C-22, *An Act to amend the Patent Act*. On April 14, 1987, Speaker Fraser delivered a landmark ruling on the admissibility of a particular motion during Routine Business, a ruling which forms the centrepiece of this chapter. In the text of this ruling, Speaker Fraser laid before the House both his reasoning and his personal philosophy on the key issues of dilatory motions and their effect on parliamentary business.

The Speaker was called upon to make other key decisions with respect to the precedence and progress of business before the House. On two occasions, he was asked to go beyond the strictly procedural interpretation of the rules and to prevent the application of closure. On another occasion, he was tasked with determining on the narrowest of terms whether a notice of time allocation and the moving of the motion conformed with the commonly understood rules and practices. Again, with respect to the motion “That Strangers be ordered to withdraw”, he was asked to decide whether the moving of such a rarely invoked motion was in order. Other decisions in this chapter reflect on the “lapsing” of

motions and the right of the Government to determine the sequence of business. Finally, a statement by Speaker Fraser is included which illustrates his reasoning for rescinding a recall of the House itself.

## ARRANGING THE BUSINESS OF THE HOUSE

Motions moved during Routine Proceedings; dilatory motions; discretion of the Speaker

April 14, 1987

*Debates*, pp. 5119-24

**Context:** On April 13, 1987, during Routine Proceedings, Mr. Doug Lewis (Parliamentary Secretary to the Deputy Prime Minister) moved immediately after presenting the Government's responses to petitions that the House should forthwith proceed to Motions. A long debate ensued, during which the Opposition Members accused the Government of trying to prevent them from presenting petitions; they attacked this as a manoeuvre designed to enable the Government to move time allocation on the debate on Bill C-22, An Act to amend the Patent Act.<sup>1</sup> The Speaker took the matter under advisement. The following day he ruled that the Government could, in that specific case only, proceed to another item under Routine Business. Because of the delaying tactics used by the Opposition in the preceding weeks to block consideration of Bill C-22, the Speaker deemed that it was in the interests of the House to allow the Government to proceed with its motion. His decision is reproduced in full below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I indicated to the House yesterday that I would be prepared to rule at eleven o'clock this morning on the matter which was raised yesterday by the honourable Parliamentary Secretary to the President of the Privy Council who moved under Tabling of Documents that the House should now proceed to Motions. It was evident that the effect of this motion, if carried, would be to supersede all intervening routine proceedings. I invited argument on the admissibility of the motion and reserved my decision.

The contributions made by all honourable Members who participated in the discussion were very forthright. A number of valid points were raised and the Chair appreciated the force of the arguments which were made.

The honourable Member for Burnaby (Mr. Svend Robinson) referred to my ruling of November 24, 1986, in which I stated that a motion having the effect of superseding a number of items under Routine Proceedings would be inappropriate and that we should proceed from item to item.<sup>2</sup> In reserving my decision yesterday, I was very conscious that I had made that ruling and that the motion moved yesterday by the honourable Parliamentary Secretary to the President of the Privy Council was without precedent. The two motions are indeed similar but the circumstances are considerably different. However, the concerns of the Chair remain the same.

The honourable Member for Churchill (Mr. Rod Murphy) suggested that the only motion which could be moved during Routine Proceedings was one to proceed to the Orders of the Day. However much I may be inclined to agree with him, the fact remains that we have a number of precedents to the contrary. The Hon. Deputy Prime Minister (Hon. Don Mazankowski) stated:

If the consideration of Routine Proceedings is to be considered a sacred process, item by item then we will have to go back and re-examine the dilatory motions and the procedural tactics, as well as the procedural acceptability of some of these dilatory motions.

The Chair fully agrees with this statement. The Hon. Deputy Prime Minister also stated that there surely has to be some balance, and with this comment the Chair also agrees.

The honourable Member for Windsor West (Hon. Herb Gray) claimed that a superseding motion can only be accepted when there is something before the House to be superseded. The honourable Member for Cape Breton—East Richmond (Mr. David Dingwall) reinforced this point when he said that the precondition for a superseding motion is that there be debate on the floor of the House. It would be difficult to quarrel with the logic of these arguments and I believe they strengthen the case for a total review of the admissibility of dilatory motions during Routine Proceedings.

A number of honourable Members dealt with the importance of protecting the fundamental rights Members have under Routine Proceedings. However, the fundamental rights of Members can be violated by the tactics of obstruction as well as by the unreasonable restriction of debate. The honourable Member for Cochrane—Superior (Mr. Keith Penner) went to the heart of the matter when he stated that the procedural tactics which the House has witnessed have little to do with the content of Bill C-22. As I made clear yesterday, the Chair is not the least bit interested in the content of the Bill. The Chair is, however, gravely concerned with the effect of these tactics by either side on the well-being of the House of Commons.

The House has had before it for almost six months a highly controversial piece of legislation, namely, Bill C-22, an Act to amend the Patent Act. This is not the first time the House has had to deal with controversial legislation, neither will it be the last. It is essential to our democratic system that controversial issues should be debated at reasonable length so that every reasonable opportunity shall be available to hear the arguments pro and con and that reasonable delaying tactics should be permissible to enable opponents of a measure to enlist public support for their point of view. Sooner or later every issue must be decided and the decision will be taken by a majority. Rules of procedure protect both the minority and the majority. They are designed to allow the full expression of views on both sides of an issue. They provide the Opposition with a means to delay a decision. They also provide the majority with a means of limiting debate in order to arrive at a decision. This is the kind of balance essential to the procedure of a democratic

assembly. Our rules were certainly never designed to permit the total frustration of one side or the other, the total stagnation of debate, or the total paralysis of the system.

Bill C-22 was first introduced on November 6, 1986 and given first reading on November 7, following a division in both cases. The strong opposition to the Bill led to the use of procedural tactics for purposes of delay to which the Government responded with procedural tactics of their own. Seven divisions took place prior to the introduction of the Bill, most of them resulting from the moving of dilatory motions during Routine Proceedings. Fourteen more divisions, most of them again resulting from the moving of dilatory motions during Routine Proceedings, took place before the Bill obtained a second reading on December 8, 1986.

The Bill was referred to a Legislative Committee which reported it back to the House with amendments on March 16, 1987, after 24 meetings and 82 hours of debate as the Deputy Prime Minister pointed out. Numerous amendments were proposed at the report stage to which four days have so far been devoted.

On April 7, the Hon. Minister of Consumer and Corporate Affairs (Mr. Harvie Andre) gave notice of an allocation of time motion in terms of S.O. 117. This Standing Order was adopted by the House in 1968 and has been regularly used ever since. It is a legitimate procedure provided it is not abused and it has been employed by Governments both Liberal and Progressive Conservative without any procedural challenge to their right to do so.

As the House knows, dilatory tactics prevented the House from reaching Motions on two successive days last week. On the third day, Friday, the Government undertook not to proceed with its allocation of time motion respecting Bill C-22 and by mutual agreement Routine Proceedings did not take place. The tactical battle has unfortunately become a substitute for debate. Opponents of the Bill have used various devices to delay the passage of this Bill at its successive stages. The Government has countered by using superseding motions having the opposite effect. To the viewing public, these tactics must be totally meaningless. Our procedures are being used for purposes for which they were never originally intended, and the public could be pardoned for believing that our rules have no logical basis at all.

In the kind of situation which faces us, I have no doubt that negotiation provides the only route to a satisfactory solution. However, when negotiations fail there comes a time when the Chair is obliged to consider what its own responsibilities are. One of the functions of the Speaker is to ensure that the House is able to transact its business. This does not mean that the Chair plays any part in assisting the Government in the management of its business agenda. I want to repeat that; this does not mean that the Chair plays any part in assisting the Government in the management of its business agenda.

Considerable debate has already taken place on this Bill. It cannot be argued that the opportunities for airing objections to it have been unreasonably restricted. There has been considerable disruption of Routine Proceedings which, as I have said, has given me very grave concern.

I might point out that I invited honourable Members last Wednesday, if they chose at that time, to give any advice they might have for the Speaker.

Routine Proceedings are an essential part of House business and if they are not protected the interests of the House and the public it serves are likely to suffer severely.

The moving of dilatory motions during Routine Proceedings is a very recent practice which originated in the early 1980s. I share the doubts expressed by some honourable Members yesterday as to its procedural validity. It is a practice which can supersede the presentation of petitions, delay indefinitely the introduction of Bills—those of Private Members as well as those of the Government—and completely block debate on motions for concurrence in committee reports as well as on allocation of time motions. These arguments were made very effectively by honourable Members in the course of their contributions yesterday. The honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier) argued very strongly that during Routine Proceedings a Member should be recognized only for the purpose contemplated by the particular rubric under which he or she rises. Since Routine Proceedings have been moved to the morning on three days of the week, these problems have been aggravated. However, this is a broader issue which will need to be addressed at another time.

The immediate question which faces the Chair is whether the motion moved yesterday by the honourable Parliamentary Secretary to the President of the Privy Council is acceptable or not. I recognize that if we are to adhere rigidly to recent precedents, including my own ruling of November 24, 1986, the motion would have to be ruled unacceptable. The House is nevertheless facing an impasse which it has been unable to resolve for itself. There comes a time when the Chair has to face its responsibilities. When circumstances change and the rules of procedure provide no solution, the Chair must fall back on its discretion in the interests of the House and all its Members. This may require the Chair to modify or vary an earlier decision.

In using my discretion, I believe I am supported by the centuries old tradition which attaches to the Office of Speaker. It was Speaker Lenthall who, in the reign of Charles I, declared in the presence of the King that the Speaker's first duty lay to the House of Commons. It was Speaker Brand who in 1881 ended the paralysis of the British House by imposing closure of his own initiative.

An eminent parliamentary authority, Josef Redlich, has written that it is the duty of the Speaker to serve the majority and the minority:

— by maintaining the rules and the usage of centuries, and by taking care that both majority and minority are not impeded in the use of the forces and the weapons which the order of business provides for strong and weak. Protection of a majority against obstruction and protection of a minority against oppression are both alike functions of the Chair.

When interpreting the rules of procedure, the Speaker must take account not only of their letter but of their spirit and be guided by the most basic rule of all, that of common sense.

The practice of using dilatory motions as a means of obstruction is undoubtedly sanctioned by our parliamentary practice. However, many parliamentary jurisdictions in the Commonwealth place restrictions on the extent to which they can be used. For example, in the British House of Commons the Speaker has the power to refuse a dilatory motion if he believes it to be an abuse of the rules of the House. By the same token, he is empowered to allow them if he believes them to be justified.

I repeat my conviction that the entire question of the use of dilatory motions during Routine Proceedings needs to be examined and that no procedures should be sanctioned which permit the House to be brought to a total standstill for an indefinite period. Division bells are no substitute for debate.

This Parliament has been a Parliament of reform. We have seen important changes implemented designed to facilitate the flow of business, increase the powers of committees, improve the opportunities of Private Members, and increase the effectiveness of our procedures.

The decision of the House to change the manner of electing its Speaker is indicative of the fact that the House of Commons has matured. Has it matured enough to confer upon its Presiding Officer the discretionary powers necessary to control abuse and resolve deadlocks that the British House of Commons gave its own Speaker over a century ago? I believe it has.

Having given serious consideration to all of the arguments that have been made, I have decided that I can best serve the interests of the House by allowing the motion moved yesterday by the honourable Parliamentary Secretary to the President of the Privy Council. In doing so, I make it clear that this will not be regarded as a precedent for all time, and that in other circumstances the Chair might well disallow such a motion.

I hope all honourable Members realize that the spirit of my decision has nothing to do with the content of Bill C-22. I am concerned only with the procedures of this House and the implications for the future of what we may do today. There are circumstances in which obstructive tactics can be an abuse of the rules of the House. Equally, notice of time allocation motions after only a few hours of debate at any stage of a Bill can also be an abuse. However, when such notice is given in the face of a lengthy report stage, after detailed consideration of

a Bill has taken place during a long period of time in committee, I submit that this is a legitimate use of Standing Order 117. Both time allocation motions and dilatory motions are open to abuse. When such tactics are entered upon by either Government or Opposition the balance of democratic parliamentary government can be easily upset. The maintenance of that balance is a fundamental responsibility of the Speaker.

I wish to make it clear to all honourable Members that if this ruling is resorted to as a precedent, the Chair will interpret it in the light of the prevailing circumstances with a view to maintaining that essential balance to which I have just referred.

I wish to make some additional comments. I have not enjoyed making this ruling. Nonetheless, that is the responsibility that, in the circumstances, honourable Members have imposed upon me. I have accepted that responsibility with due regard to the traditions of this place which I have tried to adequately express in my ruling. The ruling which I have just made was made after intense consideration of not only our rules and our precedents but also with regard to as much common sense as I could bring to the present situation.

However, I want something to be clearly understood by all honourable Members wherever they sit in this Chamber. I expect every honourable Member to take my ruling in the spirit in which it is intended. It is simply this. In the absence of any clear direction according to the standing rules I have had to make a decision.

I want to address a particular concern that was made by some honourable Members during argument on this important matter. Simply stated it is this. The result of my ruling might be that the right of Private Members to present their concerns under Routine Proceedings could be prevented and, if so, their rights as parliamentarians would be unfairly and wrongfully restricted or, indeed, extinguished. Let me answer that concern. If anyone on either side of the House tries to take what could be considered unfair advantage of my ruling, I serve clear notice that as long as I am Speaker I will not tolerate such a proposition. I have had to make a decision. It is a decision circumscribed by events. No one should presume for a moment that it ought to be used as justification for abuse of whatever form against or violence to the principles of fair play.

My ruling, admittedly, has left some discretion to the Speaker. Until there are some rule changes that help resolve the need for the Speaker to exercise, in the interests of the Chamber, this discretion as Speaker, I shall strive mightily to find an acceptable resolution of the disputes. I believe that the resolution of these inevitable and legitimate disputes should be on the basis of our traditions, our rules, our precedents, and something else as well. By this I mean what is essential to this House of Commons, that is, that well accepted but not always definable thing upon which our whole constitutional history is based. It is fair play and, perhaps I can add as I have already mentioned, common sense. I should

immediately remark that common sense, like beauty, is in the eye of the beholder. Nevertheless, there is a basic common sense that those of us who have to get elected understand only too well. It is, when all is said and done, the profound sense of what is appropriate under certain circumstances and which is acceptable to reasonable people.

I have tried to give honourable Members an intellectually reasoned ruling. I have also tried to support it with a rationale that stands the test of common sense. I want to assure all honourable Members that their Speaker will not be receptive to any abuse of either the intellectual or common sense basis of this ruling. I would hope that the difficulties of the Speaker in this situation will encourage honourable Members to reconsider the present rules with a view to making changes which would secure the sanctity of Routine Proceedings and the legitimate interest of all Members of the House of Commons.

I want to thank all honourable Members for their diligence and the sincerity with which they put their arguments. I hope that this ruling, while not satisfactory to all, will be accepted in the interests of this place.

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1. *Debates*, April 13, 1987, pp. 5071-82.
2. *Debates*, November 24, 1986, p. 1435.

## ARRANGING THE BUSINESS OF THE HOUSE

Application of closure; legitimacy of use; discretion of the Chair

June 29, 1987

*Debates*, pp. 7713-4

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**Context:** On Friday, June 19, 1987, Hon. Robert Kaplan (York Centre) rose on a question of privilege concerning notice which had been given by the Government the previous day<sup>1</sup> of its intention, pursuant to Standing Order 57, to apply closure to item No. 5 of Government Business (a motion respecting the reinstatement of capital punishment). In his submission, Mr. Kaplan referred to Speaker Fraser's ruling of April 14, 1987, and urged the Speaker to ensure there were no illegitimate uses of the rules of the House. He urged the Speaker to look at the 1976 parliamentary debate on capital punishment and, in particular, to ensure that enough time was given for a full debate on this occasion, especially to hear the minority view. The Parliamentary Secretary to the Deputy Prime Minister (Mr. Doug Lewis) pointed out that, on the previous day, only notice of the intention to apply closure had occurred, pursuant to the terms of Standing Order 57. Since there was an essential difference between notice and an actual motion of closure, he argued that Members' rights had not been breached. Following further interventions by Mr. Lewis, Mr. Kaplan and Mr. Svend Robinson (Burnaby), the Speaker, sensing that the parties might hold further discussions on this issue, suggested the current discussion be adjourned and offered the assistance of the Chair in the matter.<sup>2</sup> On Friday, June 26, the Government renewed notice of its intention to move a motion of closure under the provisions of Standing Order 57 in relation to the resolution, and at that time Speaker Fraser allowed other Members to briefly address the matter raised by Mr. Kaplan.<sup>3</sup> The Speaker then indicated he would deliver his ruling on Mr. Kaplan's question of privilege at the commencement of the day's proceedings on Monday, June 29.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Friday last, just before the House adjourned, the Hon. Deputy Prime Minister (Hon. Don Mazankowski) renewed notice of his intention to move a motion under Standing Order 57 in relation to Government Business No. 5.

If the closure motion is moved and adopted later this day, the result will be that at one o'clock Tuesday morning all debate on the motion for the reinstatement of capital punishment will end and the House will divide on the motion and any amendments thereto.

On Friday, June 19, the day after the Deputy Prime Minister first gave notice of closure, the honourable Member for York Centre rose on a question of privilege, arguing that the Deputy Prime Minister was making illegitimate use of the rules of the House. The honourable Member for York Centre, in his argument, referred to a ruling by the Chair on April 14, 1987, and asked the Chair to apply the same logic used then to the present situation.

When the Chair ruled on April 14, the House was at a standstill. Routine Proceedings were, for several days, totally taken up by dilatory tactics that were a matter of grave concern to me. I refer honourable Members to page 5120 of *Hansard*, where I reported my dilemma as follows:

The House is nevertheless facing an impasse which it has been unable to resolve for itself. There comes a time when the Chair has to face its responsibilities. When circumstances change and the rules of procedure provide no solution, the Chair must fall back on its discretion in the interests of the House and all its Members.

Further, on page 5121 of *Hansard*, I said the following:

I repeat my conviction that the entire question of the use of dilatory motions during Routine Proceedings needs to be examined and that no procedures should be sanctioned which permit the House to be brought to a total standstill for an indefinite period. Division bells are no substitute for debate.

If honourable Members have taken from my ruling of April 14 that the Chair would, in the future, exercise discretion on any or all of the rules of the House, they have misunderstood the letter and the spirit of the ruling. The discretion I exercised on that day was in the context of an absolute lack of any guidance in the Standing Orders—I repeat, in the context of an absolute lack of any guidance from the Standing Orders—or in the precedents, or practices, or conventions of this House. Nor was there any direction from the House itself, at that moment.

The honourable Member for York Centre and the honourable Member for Burnaby were skilled advocates in the arguments they presented on June 19 last. The Chair appreciates that it may be very difficult for honourable Members on both sides of the capital punishment debate to focus only on the Speaker's role at this time. It is essential, I might add, that the Chair refrain from showing sympathy with one side or the other on such an important national debate. What the Chair must now address is, quite simply, the terms of Standing Order 57, which have been unchanged since 1913.

Notice of closure has been given 23 times since 1913; it has been moved and adopted 19 times. It is not a new Standing Order, even if only infrequently used. This present situation is not without precedent. Closure has been used by all Parties while in Government; it has been used after much, and after very little debate. It remains to this day a procedural avenue available to the Government. By and large, the timing of its use becomes a political issue, but some debate clearly must have taken place. Thus, the timing of closure in debate is clearly not a procedural matter...

The British practice, which has been referred to, is quite different. When closure is applied in Great Britain no further debate can take place. In our Commons, debate continues after the adoption of the closure motion until 1 a.m.

on that sitting day. The British rule is more severe, and thus their Speaker is given by a specific Standing Order the discretion to refuse the motion. The Canadian Commons has not given its presiding officer such discretionary power.

I have reviewed all of the arguments put forward by the honourable Member for York Centre, the honourable Member for Windsor West (Hon. Herb Gray), the honourable Member for Kamloops—Shuswap (Mr. Nelson Riis), the honourable Member for Humber—Port-au-Port—St. Barbe (Mr. Brian Tobin), and the honourable Member for Burnaby. Politically speaking, I can understand their concern; procedurally speaking, as your presiding officer, as were many Speakers before me, I am without authority to intervene when a Standing Order is used according to our rules and practices.

The House has adopted Standing Order 57. The House must accept its consequences, if it is invoked. The honourable Deputy Prime Minister, having given notice at a previous sitting, has so far complied with the terms of Standing Order 57. If he chooses to move the appropriate motion later today, I shall have no choice but to put the question to the House.

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1. *Debates*, June 18, 1987, p. 7354.
2. *Debates*, June 19, 1987, pp. 7375-9.
3. *Debates*, June 26, 1987, pp. 7706-9.

## ARRANGING THE BUSINESS OF THE HOUSE

Application of closure; legitimacy of use; discretion of the Chair; question whether use of closure contravenes the *Constitution Act, 1867* and is inconsistent with practices of the United Kingdom House of Commons

February 7, 1990

*Debates*, pp. 7953-4

**Context:** On February 6, 1990, the Hon. Doug Lewis (Minister of Justice and Attorney General of Canada) gave notice of the Government's intention, pursuant to Standing Order 57, to apply closure to the second reading stage of Bill C-62, respecting the Goods and Services Tax. Mr. Nelson Riis (Kamloops) later rose on a point of order to indicate he would be making a submission the following day that not only was closure at that point irresponsible, but unconstitutional.<sup>1</sup> On February 7, 1990, after the Minister of Justice and Attorney General of Canada had moved the motion of closure, Mr. Riis rose immediately on a point of order to ask the Chair to consider four issues surrounding the closure motion: whether there was a responsibility for the Chair to ensure a reasonable length of debate; whether this particular use of closure was for a purpose never originally intended; whether Standing Order 57 (the closure rule) was consistent with Section 18 of the *Constitution Act, 1867*; and whether the current frequent use of closure was inconsistent with Section 18 of the *Constitution Act, 1867*, insofar as it exceeded those "privileges, immunities, and powers" held by the British House of Commons at this time. Following remarks by Mr. Peter Milliken (Kingston and the Islands) and the Minister of Justice and Attorney General of Canada, the Speaker suspended the sitting of the House to consider the argument put forward by Mr. Riis.<sup>2</sup> He returned shortly thereafter to deliver his ruling.

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Kamloops has raised a point of order in which he says it would be improper to accept the Government's motion for closure. He makes four points in this argument.

First, to paraphrase his own effective use of language and his own eloquence—and I do not mean to do a disservice to him by boiling it down into one point—his first point really is that under all the circumstances it is not fair that debate be curtailed.

He makes reference to comments that I made at another time, pointing out that in this Chamber there are many methods used by both sides in a dispute to make their point. With respect to that ruling, nothing that I say today should be considered to be any detraction from it.

Second, the honourable Member for Kamloops argued that the Government ought not to be moving closure at this time. He also argued that closure was being used for a purpose for which it was never really intended and that the effect of this is to limit freedom of speech in the Chamber.

Third, he argued that closure contravenes the Constitution of the country.

Last, and I think I have it straight, he argued that the use of closure here is inconsistent with the practice in the United Kingdom House. He refers to constitutional sections which indicate that the rights of Members here ought not be any the less than the rights of Members under the Constitution of the United Kingdom. I am going to deal with each of these. Before I do, I want to say that the honourable Member for Kamloops presented his arguments extremely clearly and with a certain compelling significance. I will deal with the first point.

The question of whether it is fair is a very subjective one. I have to point out that the rules of the House make it very clear that what the Government is moving is within the rules of the House. I am bound by the rules of the House and I must make my decision on the question of whether or not the motion by the Government is procedurally acceptable.

With respect to procedure, I have to say that it is acceptable. But the question was a purpose for which it was never intended and to counter Members' freedom of speech (*sic*). Even if that were so, I am not going to comment yea or nay on that because that is a philosophic and procedural debate that ought to take place perhaps in some other place. However, I do want to draw to the attention of honourable Members the distinction between freedom of speech and continued debate. There is a distinction.

The rule which binds us with respect to allocation of time and closure does limit debate at certain stages of the process of a Bill through this place, but it is probably going too far to say that it contravenes freedom of speech in the House. I do want to point out that even if the honourable Minister's motion is accepted by this House then there is an extensive debate later on today and tonight, there is then committee, there are other ways in which this matter can be raised in the House on a daily basis. Then the Bill has to come back again to this House where there is further debate.

The honourable Member makes a very interesting argument. I am not prepared again to rule on it because if I did I would be straying into an area in which I am not allowed to go. He states that our rule in the House contravenes our Constitution. That may or may not be, but the authorities for many, many years back make it quite clear that I cannot rule on a legal or a constitutional issue.

Lastly, I will deal with the argument that it is inconsistent with the United Kingdom, the use of closure here. It may be, but in the United Kingdom, there is a specific rule which attaches to the Speaker a very clear discretion as to whether or not a motion of closure ought to be entertained under all the circumstances. There is no such rule in this House.

Therefore, having listened very carefully to the honourable Member for Kamloops, the honourable Member for Kingston and the Islands, and because no Speaker is immune to what is going on in this Chamber, having listened to

representations as to what has been taking place over a number of days and without making any judgment on that, I have taken it into account. I hope the honourable Minister of Justice will not be offended that I felt that it was not necessary to recite all of what had taken place. Looking at all of the circumstances and coming back again to the essential thing that I have to decide, and that is whether or not the motion is procedurally sound, I must rule that it is.

In ruling that it is, I am not in any way taking away from the cogency of arguments the honourable Member for Kamloops put up with respect to constitutional and other matters. They may well be matters which the House may wish to pursue. It may well be that the House would wish to look again at the rules, but that is a matter for another day.

Therefore, my ruling is that the motion is in order.

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1. *Debates*, February 6, 1990, pp. 7903-4.
2. *Debates*, February 7, 1990, pp. 7947-53.

## ARRANGING THE BUSINESS OF THE HOUSE

Government Orders; notice of intention to move time allocation; interpretation of applicable Standing Order; notice ruled invalid

October 11, 1990

*Debates*, p. 14030

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**Context:** On October 11, 1990, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a question of privilege respecting the notice of time allocation which had been given the previous day<sup>1</sup> pursuant to Standing Order 78(3) by the Government, with respect to the second reading stage of Bill C-84, An Act respecting the privatization of the national petroleum company of Canada. In his submission, Mr. Gauthier, by citing Standing Order 78 in its entirety, argued that the necessary prerequisite to giving notice under Standing Order 78(3) was the fact that the Government had to have made an attempt to consult and find agreement under parts (1) and (2) of the Standing Order. He contended that this attempt at consultation and agreement had not taken place, and asked accordingly that the notice be ruled null and void. In response, the Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper) made the point that the wording of the Standing Order mentions “agreement” but does not lay out the process to be followed. He then claimed that there had been several attempts, both publicly and privately, to proceed with discussions. Other Members commented on the matter. The Speaker expressed his concern about the wording of the rule and invited further interventions on this narrow point. He then reserved his decision,<sup>2</sup> and returned to the House later that day to deliver the ruling.

## DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Ottawa—Vanier rose earlier this morning on a question of privilege concerning whether or not the honourable Minister (Hon. John McDermid, Minister of State (Privatization and Regulatory Affairs)) had given valid notice pursuant to the provisions of sections 78(1), 78(2) and 78(3) of the Standing Orders relating to time allocation.

The honourable Minister said “I am informed that to date agreement has not been reached under the provisions,” et cetera. I point out that he also said “we will try to get an agreement with the opposition parties on a reasonable length of time”.

There has been considerable discussion this morning with respect to what is or what is not required under the Standing Order in terms of consultation or exchange of views between the Government and others in the Chamber.

I want it clearly understood that my ruling today does not turn in any way, or on any particular, on any of the comments that were made during arguments as to the question of discussions between, or lack of discussions between, anybody in this Chamber at all.

My ruling does not take anything away from rulings of past Speakers, and especially my ruling of some months ago, in March I think of last year. It made it very clear that under the rules it is not for the Speaker to go behind the statement of the Minister and try to make a factual ruling as to whether or not discussions were adequate or inadequate or, for that matter, try to strain the rules and to try to give an interpretation that substitutes for the plain wording of the rule.

I have also indicated that it might be in the interests of the House that the entire rule was looked at again, reconsidered, and perhaps redrafted.

The rule I am bound by, and this place lives by the rule of law, is the plain words of [Standing Order] 78(3) and it states:

(3) A Minister of the Crown who from his or her place in the House, at a previous sitting, has stated an agreement could not be reached —

It sometimes happens that when one has to try to interpret what is meant by words, some guidance or some difference shows up between the English and the French. There is, in my opinion, absolutely no difference whatsoever in the meaning of those words either in English or in French.

As I have pointed out, the honourable Minister said: "I have been informed to date that agreement has not been reached." I find on this very narrow ground, but one which I cannot ignore as your Speaker because it is clearly there in the rules, that the Minister should have said "could not be reached." That is what is required under the [rules] and, as a consequence, I have to rule that the notice given yesterday is not valid. Of course, it is for the Government to decide whether it wishes to give the notice again.

**Postscript:** On October 22, 1990, the Government gave notice of its intention to apply allocation of time to the second reading stage of Bill C-84.<sup>3</sup>

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1. *Debates*, October 10, 1990, p. 14016.
2. *Debates*, October 11, 1990, pp. 14019-28.
3. *Debates*, October 22, 1990, p. 14523.

## ARRANGING THE BUSINESS OF THE HOUSE

Motion “That Strangers be ordered to withdraw”; acceptability; moving on a point of order

April 4, 1990

*Debates*, pp. 10186-7

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*Context:* On April 4, 1990, during discussion on a point of order raised by Mr. Jean-Robert Gauthier (Ottawa—Vanier) respecting Bill C-21, the Unemployment Insurance Amendment Act, Mr. Nelson Riis (Kamloops) attempted to move the motion “That Strangers be ordered to withdraw” pursuant to Standing Order 14. The Speaker ruled immediately that the Member could not move the motion, since he would have had to have the floor “on debate”. Mr. Gauthier supported Mr. Riis’ attempt to move the motion and, citing the text of the Standing Order, sought clarification. Mr. Riis also rose to seek clarification.<sup>1</sup> The Speaker suspended the House briefly to review the concerns mentioned, and returned shortly thereafter with his definitive ruling.

## DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member has moved a motion. First, I want to say to the honourable Member that I think precedent and procedural law are such that it is not appropriate to move that motion unless the honourable Member has the floor on debate, and I am so ruling. That does not mean that the honourable Member may not move the motion at another time....

The honourable Member for Ottawa—Vanier is concerned that there may have been an error in the Speaker’s ruling and the honourable Member for Kamloops is indicating that he wants some clarification as well. Speakers are not infallible. I am going to stand the House down for a few minutes to respond to the concern that has been mentioned. Is that agreed?...

First of all, I want to thank all Members of the House for their courtesy, especially the honourable Member for Ottawa—Vanier and the honourable Member for Kamloops for allowing me a few minutes to respond to the question put by both honourable Members.

The matter arises from a motion put on a point of order by the honourable Member for Kamloops at the end of Question Period. That motion is in effect a motion which when the honourable Member sees a stranger involves putting the matter to the House. The House would vote as to whether or not the House ought to be cleared. That is, all people in this Chamber whether they are guests or the public or whether they work for the House, other than Members of Parliament, would have to clear the House. The House would then move to a secret session.

The ruling I made was that it is not appropriate to move that particular motion on a point of order. At that point both honourable Members in a very courteous way asked if I could give them authority to do that.

I have considered the authorities and I would like to share them with honourable Members. First, I am referring to *Beauchesne* Fifth Edition, Citation 234(2):

A Member cannot rise on a point of order to move a motion.

The second citation I wish to bring to the attention of the House is *Beauchesne* Sixth Edition, Citation 318(2):

A Member cannot rise on a point of order to move a motion—except for a motion that a Member be now heard.

I refer to the *Annotated Standing Orders*, page 459, footnote No. 1:

Although Members cannot move motions when recognized on a point of order (*Beauchesne*, 5th ed., p. 78), if the Chair has not recognized a Member to move a motion “That a Member be now heard —

— and goes on to discuss that particular exception. I have tried to accommodate honourable Members and give the reason for the order, and as I have said before, if there are practices here that honourable Members do not agree with in terms of our rules and procedures then of course there is a time and place to decide to change them if possible. I think I have to say that the ruling I made must stand.

I want to point out something else. This ruling is on the narrow point as to whether or not the honourable Member could move the motion on a point of order. That is all it is. There may be another discussion with respect to what it was the honourable Member from Kamloops wanted to do.

I thank honourable Members for their courtesy.

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1. *Debates*, April 4, 1990, pp. 10185-6.

## ARRANGING THE BUSINESS OF THE HOUSE

Motions declared lapsed; adjournment of the House; lunch break

April 15, 1987

*Debates*, pp. 5187-8

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*Context:* On April 9, 1987, shortly before the traditional 1:00 p.m. lunch period was scheduled to begin, Mr. Nelson Riis (Kamloops—Shuswap) moved, after having presented a petition, the motion “That the House proceed to the next item of Routine Proceedings”. The bells were rung to call Members to a recorded division on the motion. At 1:00 p.m., the Acting Speaker (Hon. Steven Paproski) declared the motion lapsed. Later that day, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order to object to Mr. Paproski’s actions.<sup>1</sup>

Mr. Gauthier began his presentation by first referring to an earlier point of order he had raised on December 4, 1986,<sup>2</sup> where he had objected to a motion declared lapsed by the normal hour of adjournment on the previous day.<sup>3</sup> He continued his presentation by citing Section 49 of the *Constitution Act, 1867*, which states that questions arising in the House are to be decided by a majority of voices. Mr. Gauthier argued that in both instances the matter should have been allowed to come to a recorded vote. He asked the Speaker to rule on the issues raised. The Speaker’s decision is reproduced in full below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On December 4, 1986, the honourable Member for Ottawa—Vanier raised a point of order concerning the right of Members to ask for a recorded division, notwithstanding Standing Order 9(1). The honourable Member also asked for clarification of the Chair’s decision to declare a motion lapsed at the usual time of adjournment. On April 9 last Thursday, the honourable Member raised another point of order when the Chair declared another motion lapsed at the time of interruption for lunch.

In the course of his comments, the honourable Member for Ottawa—Vanier quoted Section 49 of the British North America Act which to him means that when a question is before the House, it shall be decided by a recorded division. The honourable Member for Ottawa—Vanier also referred to *Beauchesne* Citation 217, which describes the practice of having the Party whips march up the aisle and bow to the Speaker to indicate their Members are ready to vote.

The honourable Member for Ontario (Mr. Scott Fennell) argued in support of the honourable Member for Ottawa—Vanier stating that he felt on December 4 the Deputy Speaker’s decision was premature and that the division ought to have taken place.

I should first like to deal with the question of the time. I have reviewed the record and have come to the conclusion that the Chair intervened at the proper time. Second, the lapsing of motions is not new to this House and, in fact, predates the 1982 bell ringing incident referred to by the honourable Member for Ottawa—Vanier.

On July 23, 1969, Speaker Lamoureux refused to put a motion to the House after having put an amendment to it because by the lapse of time the main motion had become a nullity. Speaker Lamoureux felt that to put and divide on a motion that would in fact be inoperable was a waste of the time of the House. I refer honourable Members to page 11513 of the *Debates* of that day.

More recently, to quote only one of many precedents, Madam Speaker Sauvé, on May 17, 1983, as reported at page 25530 of *Hansard*, ruled as follows on a motion to adjourn the House when the ordinary time of adjournment had been reached:

As the House had not seen fit to vote on this motion by 6 p.m., I have decided that Standing Order 8(1) must come into force.<sup>4</sup>

Standing Order 8(1) was the Standing Order then dealing with the ordinary time of adjournment.

On December 3 last year, the motion before the House was: That the House do now proceed to Introduction of Bills. At 6 p.m., the usual time of adjournment, it would have been impossible for the House to proceed to Introduction of Bills, even if it had agreed to do so.

On April 9, 1987, the motion before the House at one o'clock was similar in that, if adopted, the House would have proceeded to Introduction of Bills. However, on Thursday it is not possible to proceed to Introduction of Bills after one o'clock because of Standing Order 19(4).

Previous Speakers have ruled consistently that motions such as to adjourn the House, to adjourn the debate, to proceed to the Orders of the Day, that an honourable Member be now heard, are all inoperable beyond the ordinary hour of adjournment which is set by Standing Order 9(1). Such demanded divisions when the bells are ringing at six o'clock are therefore quite unnecessary and the application of Standing Order 9(1) supersedes their taking place.

The motion moved on April 9, 1987, was equally inoperable at the hour of interruption for lunch.

The Chair does not believe this practice infringes on our constitutional rights. The relevant sections of the Standing Orders prevail and render such motions null and void. A recorded division is, therefore, entirely useless.

Prior to the new rules, my predecessors have taken, from time to time, the initiative to suspend the sitting of the House when the bells were ringing beyond the ordinary time of adjournment on a substantive motion. This was done only after consultation with the Whips.

This approach was subsequently confirmed in a Standing Order which now allows either the Opposition or Government Whip to ask the Chair for a deferral. This can only be done on motions of substance.

I want to thank the honourable Members for Ottawa—Vanier and Ontario for raising the matter and for giving me this opportunity to comment on the subject. I therefore declare that the rulings made at 6 p.m. on December 3, 1986,<sup>5</sup> and at 1 p.m. on April 9, 1987,<sup>6</sup> conform to the letter and the intent of the Standing Orders and also to rulings made by my predecessors. I also want to thank the honourable Member for Ottawa—Vanier for his comments.

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1. *Debates*, April 9, 1987, pp. 4996-7, 5010-1.
2. *Debates*, December 4, 1986, pp. 1760-1.
3. *Debates*, December 3, 1986, p. 1757.
4. *Debates*, May 17, 1983, p. 25530.
5. *Debates*, December 3, 1986, p. 1757.
6. *Debates*, April 9, 1987, pp. 4996-7.

## ARRANGING THE BUSINESS OF THE HOUSE

Government Orders; change in the proposed order of business; right of Government to determine sequence of Government business

October 6, 1987

*Debates*, p. 9704

**Context:** *On October 6, 1987, during Government Orders, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order because of a change in the order of business of the House. He argued that the Projected Daily Order of Business indicated that the House would on that day be examining Bill C-55, An Act to amend the Immigration Act, 1976, and to amend other Acts in consequence thereof, but that the Government had decided at the last minute that the debate would instead be on the Constitution Amendment, 1987. After hearing Members' comments,<sup>1</sup> the Speaker said it was important for the public to understand that the Government had the right to determine the order of Government business in the House and that changes in it inevitably inconvenience both Government and Opposition Members. His remarks are reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** It might be helpful, especially to the public which is listening and watching, if I commented on the intervention of the honourable Member for Ottawa—Vanier, which I think was quite appropriate.

As honourable Members know, sometimes the press reports the fact that during ordinary debate something less than all Members of the House of Commons are in their seats. There is a reason for that. Honourable Members cannot spend all their time in this Chamber during debate. They have innumerable obligations to meet, especially in respect of their own constituents and also especially in respect of the nearly 40 committees which can be sitting at one time or another putting in the work dispatched to them by the Chamber.

The comments of the honourable Member for Ottawa—Vanier were appropriate. I also appreciate the comments of the honourable Member for Kamloops—Shuswap (Mr. Nelson Riis). In a sense he enforced the comments made earlier by his colleague. I know they have both made efforts to adjust to a change in the schedule here.

However, I think it is especially important that the public understand that a great deal of the work of this place goes on outside the Chamber. It is not always easy to change the commitments of Members and bring them into the Chamber.

The honourable Minister of State (Hon. Doug Lewis) in speaking for the Government recognized this, but again it is important for the public to understand that it is the Government's position to set the order of each day, as it has done in this case. The honourable Minister of State had indicated that he would have

wished that perhaps more notice could have been given. In any event, that was the decision of the Government, and that has always been the way governments run this place.

I think it is very important that the public understand that a great deal of the work which is being done on behalf of the public is not done in this Chamber. It is done in other places and, as a consequence, when there is a change here it puts pressure not only on Members of the Opposition but on Members on the Government side, because it requires a change in plans and a change in schedules. It is important that this is properly recorded and, if I might say so, emphasized from time to time.

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1. *Debates*, October 6, 1987, pp. 9703-4.

## ARRANGING THE BUSINESS OF THE HOUSE

Recall of the House; rescinding recall; prerogative of the Speaker

September 8, 1992

*Debates*, p. 12709

**Context:** Pursuant to Standing Order, the House of Commons rose for the usual summer recess on June 23, 1992. On June 25, 1992, the Speaker of the House received a request from the Government to recall the House on July 15, 1992 to consider the constitutional situation in Canada. The Speaker ordered the recall of the House for that date.

For some months previous, the Government had been involved in constitutional discussions with a number of provincial premiers and with groups and individual Canadians through a series of consultative conferences. A tentative agreement on proposals for constitutional reform was reached between the President of the Privy Council and Minister Responsible for Constitutional Affairs (Rt. Hon. Joe Clark) and certain of the provincial premiers on July 7, 1992. On July 10, 1992, a letter signed by representatives of the three recognized parties in the House of Commons was sent to the Speaker asking that the recall of Parliament for July 15 be rescinded in light of this and other significant developments. Such action was undertaken by the Speaker the following day.

However, as this action was unprecedented and not provided for in the Standing Orders, the Speaker took the opportunity on September 8, 1992, when the House reconvened, to explain the reasons that had led him to rescind the recall of the House for July 15, 1992. His statement on this matter is reproduced below.

### DECISION OF THE CHAIR

**Mr. Speaker:** [...] I am also tabling today documentation relating to the request by the Government to recall the House for July 15, 1992 as well as documentation which resulted in my decision to rescind the recall of the House scheduled for that day.

On June 26, 1992 after consultation with the Government under the provisions of Standing Order 28(3) and being satisfied that the public interest required that the House be recalled in order to consider the constitutional situation, I gave notice that the House meet on July 15, 1992.

On July 10, I received a request, signed by representatives of the three recognized parties in the House, to rescind the recall because they felt it was no longer necessary, in the public interest, to recall the House for July 15, 1992.

This request to rescind the recall was unprecedented and the Standing Orders do not offer the Speaker any direction as to the action to be taken in such a case. As the recall of the House is ultimately the prerogative of the Speaker, on July 11, 1992, after careful consideration, I directed that the recall of July 15, 1992

be rescinded. I came to this decision as the request to rescind the recall was made by all three recognized parties that agreed it was no longer necessary in the public interest for the House to meet at that time.

I wish to thank the House for allowing the Speaker to explain the reasons for his decision.

## CHAPTER 3 — THE DAILY PROGRAM

### Introduction

The conduct of parliamentary business on a given sitting day follows a pattern which, in general terms, is regulated by the Standing Orders and can be found printed on the daily *Order Paper*. The House opens its proceedings each day with prayers, and then pursuant to Standing Order, proceeds to a prescribed daily routine of business. In the period October 1986 to November 1988, the operative Standing Order was numbered 19; from November 1988 to the end of Speaker Fraser's term in 1993, the Standing Order was numbered 30. The actual proceedings carried out under each of these rubrics is governed by Standing Order and practice.

While the precise *time* for the commencement of Statements by Members, of the Oral Question Period, and of the calling of items collectively known as Routine Proceedings may vary according to the day of the week, the *number* and *order* of items called under the Routine Proceedings normally does not. These items are Tabling of Documents, Statements by Ministers, Presenting Reports from Inter-parliamentary Delegations, Presenting Reports from Committees, Introduction of Government Bills, Introduction of Private Members' Bills, First Reading of Senate Public Bills, Motions, Presenting Petitions, and Questions on the *Order Paper*.

The Standing Orders provide as well for an adjournment debate, commonly known as the "Late Show", to take place on four days of the week.

For ease of reference therefore, this chapter is divided into five sections: Prayers, Statements by Members, Oral Questions, Routine Proceedings, and Adjournment Proceedings. Each of these sections opens with a separate introduction.

During the seven years of Speaker Fraser's term, many amendments to the Standing Orders governing the number, order and duration of items under this daily program were adopted. Thus the Chair Occupants were continually called upon to interpret and re-interpret procedures based on the new text and new "understandings", as well as to enforce commonly-understood practices. Account of these changes and relevant discussions have been highlighted in the introductory text in the individual sections of this chapter. Readers are referred as well to key rulings touching upon the daily routine of business which are located in other chapters of this book.

## THE DAILY PROGRAM

### Prayers

#### Introduction

The practice of reading prayers at the start of each sitting day dates back to 1877. Since that time the sectarian nature of the prayers, the references to the Sovereign and the tradition of excluding the public have all been the source of some discussion. Various committees on reform of the House have proposed alternatives, including revised wording, admitting the public before prayers are read, and inviting representatives of various faiths practised in Canada to come to lead the House in prayer each sitting day.

Although no changes to the practices concerning prayers were agreed to during Speaker Fraser's term, he was called upon to make a key ruling concerning the provisions of the Canadian Charter of Rights and Freedoms and the reading of the prayers. The ruling is included in this section of the chapter.

## THE DAILY PROGRAM

### Prayers

#### Prayers and the Canadian Charter of Rights and Freedoms

June 19, 1990

*Debates*, pp. 12928-9

**Context:** On June 19, 1990, Mr. Howard Crosby (Halifax West) rose on a point of order with respect to the daily prayers preceding the business of the House. He referred to a Supreme Court of Canada ruling which, in his opinion, held that the reading of prayers in schools constituted a violation of the Canadian Charter of Rights and Freedoms. Keeping in mind this judgment, Mr. Crosby asked the Speaker to rule on whether the reading of prayers in the House of Commons violated the provisions of the Charter and, if so, to dispense with this practice. Other Members also intervened on the matter.<sup>1</sup> The Speaker made an immediate ruling which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member has raised a matter which relates to Standing Order 30(1) which reads:

The Speaker shall read prayers every day at the meeting of the House before any business is entered upon.

That is a rule which, of course, binds me as your Speaker. It also happens to be a rule that has been in place, not just for a few years but for generations. The honourable Member urges me to make a decision that it is somehow inconsistent or contradictory to the Canadian Charter of Rights.

First, it is not the role of the Speaker to make that kind of a declaration because my jurisdiction does not enable me and does not ask me to make decisions concerning the law of the land. My jurisdiction is to make decisions concerning the procedural rules which this place has put in place and which govern us.

I have to say to the honourable Member that whatever his concerns may be, and they may be the concerns of other people, I cannot comment upon the rule that instructs us to say prayers daily on the basis of whether it does or does not infringe the Charter of Rights.

What my personal opinions might be matters very little at the moment because I am asked by all of you to interpret the rules of this place, not to give you my personal opinions about the appropriateness of prayers or the inappropriateness of prayers. Whatever temptation I may have to make some comments thereon, I, of course, have to restrain myself from saying anything.

However, if honourable Members wish either to change the form of the prayer or, for that matter, make a decision that prayers will not be said, it is not for me to do. That is up to Members. I am sure that if that matter comes under discussion the sensibilities and the sentiments of the vast majority of Canadians would be taken into account.

I think that is probably where we ought to leave the matter, except I think I can say the following to honourable Members, many of whom have been able to be with me at official and less than official occasions in this House when we have dined together. Honourable Members will remember that I always ask Members to join with me in the blessing. Honourable Members will also note that, while I am Christian, I was raised to have great respect for other people's views and the blessing always commences the same way, in such a way that the vast majority of us can join in it with respect and gratitude. I always say: "Lord, whose children we all are...." That seems to gain some considerable acceptance. I mention it for your consideration.

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1. *Debates*, June 19, 1990, pp. 12927-8.

## THE DAILY PROGRAM

### Statements by Members

#### Introduction

On each sitting day, as part of the daily order of business, the Standing Orders provide for "Statements by Members". During this period, the duration of which is no longer than fifteen minutes, Members recognized by the Chair may address the House for up to one minute on virtually any matter of international, national, provincial or local interest of their choice. At the beginning of Speaker Fraser's term, Members' Statements were governed by Standing Order 21. Following the renumbering of the Standing Orders in 1988, the relevant Standing Order number became 31.

Speakers have been guided by a number of well-established prohibitions when applying the Standing Order. For instance, Members may not use these statements as the vehicle for a personal attack, to offer congratulations, to read poetry, or for frivolous matters. Speakers have intervened when Members criticized a decision by the courts, used offensive language, or attacked the Senate or one of its members. In many cases, when ruling, the Chair would refer to guidelines first established by Speaker Jeanne Sauvé in January 1983.

The Speaker is authorized by the applicable Standing Order to interrupt and order a Member to resume his or her seat if, in the Speaker's opinion, improper use is made of this Standing Order. On a number of occasions, Speaker Fraser emphasized the difficulties inherent in this responsibility. In particular, he pointed out that because the statements are so short and follow one another so rapidly, it is often difficult to determine the direction a Member is going to take and thus the acceptability or otherwise of the remarks.

This section of the chapter comprises five key rulings made during Speaker Fraser's term which illustrate the issues faced by the Chair and the speed with which the decisions had to be delivered.

## THE DAILY PROGRAM

### Statements by Members

Guidelines: authority of the Chair to interrupt/admonish Members and maintain order; prohibition against personal attack on a Member

October 29, 1986

*Debates*, p. 864

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*Context: On October 20, 1986, during Statements by Members, Mr. Gordon Taylor (Bow River) criticized the position of the New Democratic Party on the recruitment of homosexuals and lesbians into the Royal Canadian Mounted Police. The Speaker interrupted the Member and asked him to refrain from using words that could be construed as being offensive.<sup>1</sup>*

*On October 27, 1986, Mr. Svend Robinson (Burnaby) rose during Statements by Members to denounce Mr. Taylor's remarks. The Speaker called him to order, noting that the Chair's intervention in Mr. Taylor's statement had been sufficient and that the matter should be left at that.<sup>2</sup> Later in the same sitting, Mr. Robinson raised a question of privilege regarding the fact that in his view, he should not have been interrupted while making his statement. He argued that Members have the right "to point out in a respectful and appropriate manner that the kind of language and stereotypical and homophobic rantings of the Member for Bow River have no place either in the House or anywhere else in this country". He went on to say that the Speaker had allowed Mr. Taylor to continue after advising him that he should refrain from using offensive words, while he himself had been unable to continue after being called to order by the Chair. Other Members also proceeded to comment on this matter. Although the Speaker determined that there was no question of privilege, he indicated that this was a very important matter and that he would return to the House on it.<sup>3</sup>*

*The following day, during Statements by Members, Mr. Robinson denounced once again the comments made by Mr. Taylor. The Speaker interrupted the Member once again to remind him that it is inappropriate to attack a Member when that Member has been admonished already by the Chair. He also indicated that a ruling on the matter would be delivered soon.<sup>4</sup> On October 29, 1986, the Speaker came back with his decision which is reproduced in its entirety below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** The Chair indicated several days ago that consideration would be given to the question of privilege raised by the honourable Member for Burnaby, and the matter would be brought back to the Chamber.

On October 27, 1986, the honourable Member for Burnaby rose on a question of privilege at the end of Question Period to suggest that his privileges as a Member had been infringed by the Chair's interruption of his statement under Standing Order 21 earlier that day. In that earlier statement he had called upon all Members of the House to join with him in "condemning the offensive and

degrading references which were made by the honourable Member for Bow River to homosexuals who seek to work within the RCMP". Similarly, on October 28, 1986, the Chair intervened during a statement made pursuant to Standing Order 21 by the honourable Member for Burnaby.

All Members will recall that when the Member for Bow River made his statement on October 20, 1986 I had interrupted him and asked him to "examine some of the words in his statement which might very well be very offensive to a great number of Canadians and might cause a question of privilege or point of order in the Chamber". The Member for Bow River was allowed to continue his remarks, but clearly he did heed the advice from the Chair.

If the Chair interrupted the Member for Bow River and requested him to review the language he was using, which he in fact did, then surely the Chair was also under the obligation to interrupt the Member for Burnaby who was attempting, under the guise of a statement under Standing Order 21, to comment upon the same language that the Chair had already dealt with. Such comments would not have been in order a week following the initial event using the usual vehicle of a point of order or question of privilege, because the time for raising such matters had expired and the matter had already been dealt with. In the Chair's view, such comments were also not in order using a Standing Order 21.

The Member for Burnaby was quite correct when he stated that Members are protected by parliamentary privilege for what they say in the Chamber. However, he will also realize that in order to protect this privilege, Members have imposed upon themselves certain restrictions as to what they may or may not say. Certain language is unparliamentary and not allowed. Likewise, certain actions are prohibited in our practice. It is the Chair's duty to enforce these restrictions. I have said on another occasion that these restrictions have not been imposed unilaterally on this Chamber, but have been designed by the Members in this Chamber and brought here by consent.

As Speaker Sauvé stated on January 17, 1983 when setting out guidelines for the current Standing Order 21, "The time set aside for Member's Statements should not be used to make personal attacks".<sup>5</sup> I concur totally with this admonition and suggest to the honourable Member for Burnaby that this is a prohibition which the Chair must enforce in order to maintain decorum in this Chamber and to protect all Members.

Standing Order 21 requires the Speaker to "order a Member to resume his or her seat if, in the opinion of the Speaker, improper use is made of this Standing Order". It is advisable for all honourable Members to remember that when this new order was drafted those who sat in judgment on this matter decided deliberately not to try to codify every possible exigency that might arise. I repeat what the order reads:

The Speaker may order a Member to resume his or her seat if, in the opinion of the Speaker, improper use is made of this Standing Order.

In the Chair's view, the use of Standing Order 21 to ask the House to condemn language used by another honourable Member in a situation where the Chair had already raised the matter and dealt with it was an improper use of the Standing Order. I have examined the record and the rules and reread the comments made by all honourable Members. I am still of the same view. Therefore, I do not feel that the honourable Member for Burnaby has a valid question of privilege.

I wish to add something to these comments. As I have said in this House regarding this not easy issue, Members have a right to debate issues in this Chamber, no matter how delicate or difficult they may be. But in the use of the language with which they debate it, the Chair must always be mindful that one cannot have free debate in the Chamber without order.

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1. *Debates*, October 20, 1986, p. 510.
2. *Debates*, October 27, 1986, p. 757.
3. *Debates*, October 27, 1986, pp. 767-8.
4. *Debates*, October 28, 1986, p. 810.
5. *Debates*, January 17, 1983, p. 21874.

## THE DAILY PROGRAM

### Statements by Members

#### Right of Members to criticize a decision rendered by a court

December 1, 1986

*Debates*, pp. 1636, 1651-2

**Context:** On December 1, 1986, during the period reserved for Statements by Members, Mr. Jim Fulton (Skeena) referred to the sentencing of Mr. Peter Fenwick, the Leader of Newfoundland's New Democratic Party, to a jail term with respect to his violation of a Newfoundland Supreme Court injunction against picketing during an illegal strike of provincial employees in the Province of Newfoundland. Mr. Fulton began to argue that this sentence was unjust. The Speaker interrupted the Member and gave reasons for his decision.<sup>1</sup> Later during the same sitting, Mr. Fulton and other Members sought clarification of the Speaker's decision.<sup>2</sup> The Speaker's first intervention together with the substantive part of his clarifications are reproduced below.

### DECISION OF THE CHAIR

**Mr. Speaker:** .... it is often the obligation of Members of Parliament to criticize a law. However, Members also realize it is not their place to castigate a court or judge or the decision rendered under a law....

The honourable Member raises a matter, of course, which the Chair views as one of concern. The difficulty that the Chair is in in this case, and in others, is that the honourable Member was making a statement and that the Chair is not always able to know exactly what will come in a statement. The Chair is concerned about the distinction between honourable Members being critical of the law and cognizant that the Chair has an obligation—and it is a tradition—to constrain Members whose comments may in fact be an attack or a criticism of a judgment exercised by a court. That is the dilemma that all of us as honourable Members have to find our way through.

As I think I said to the honourable Member for Burnaby (Mr. Svend Robinson) some days ago, there is a distinction between criticism of the judge and a court and criticism of the law under which that judge or court may be mandated to act.<sup>3</sup>

The other difficulty is that the honourable Member is really now into an explanation of why the honourable Member, and no doubt others, as has been reported—and the Chair is cognizant of that—may feel that a sentence meted out by a court under particular circumstances was not appropriate. The difficulty here is that the court is presumed to have all of the relevant information upon which it acts. All of that information is not here before us in this Chamber which, as some people have said and which has been historically considered, is the highest court of the land. As a consequence, it puts judges and courts in a very difficult position

indeed if honourable Members are in effect second-guessing the judgment of that court. I know that the honourable Member did not intend to do that. However, I also know and take cognizance of the fact that the honourable Member is not happy with what happened. That of course is the honourable Member's right. However, the Chair feels in this case that perhaps it is enough to accept the intervention of the honourable Member, and I made it very clear to the honourable Member that I would hear him out at this time.

I would ask all honourable Members to bear with the Chair in this difficult distinction between the undoubted right of Members of Parliament to criticize laws and the right that those who have to administer the laws not be subjected to attack for exercising what they are in fact mandated to do. I ask the honourable Member to accept the sincerity of the Chair in this matter. I have taken note of it. I shall be, as I try to be, very careful before I interrupt a statement of any honourable Member, but there are times that the Chair can be in some difficulty. In this respect, if an honourable Member has a statement which he or she wishes to make which may come close to giving the Chair some difficulty, then perhaps the honourable Member could exercise greater care indeed....

I think the response of the Chair is that there may be appropriate cases by notice and motion, or by other procedures, whereby such a procedure or such a criticism may be effected. Clearly, the Chair has to say that it is not the place to do it in Statements by Members. As I say, I am not in any way suggesting to Members that they should be limited in criticizing a law. However, I think honourable Members can see the difficulty that the Chair is in because there are only a relatively few seconds for the Chair to determine whether the statement is within the rules or outside the rules....

The Chair is not ruling that there may never be a circumstance when a sentence or some other thing connected with a court ought to be criticized. The Chair is saying that during 60-second statements, honourable Members would, I hope, be very careful not to trespass against the admonition which is traditional and historical and is contained in Citation 321 of *Beauchesne*, which reads:

All references to judges and courts of justice of the nature of personal attack and censure have always been considered unparliamentary, and the Speaker has always treated them as breaches of order.<sup>4</sup>

The honourable Member will know that the Chair did not treat the remarks of the honourable Member for Skeena as being any serious breach of order at all, but the Chair is drawing to the attention of all honourable Members the difficulty the Chair is in in these cases....

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1. *Debates*, December 1, 1986, p. 1636.

2. *Debates*, December 1, 1986, pp. 1651-2.

3. *Debates*, November 19, 1986, pp. 1315-6.

4. *Beauchesne*, Fifth Edition, Citation 321, p. 114.

## THE DAILY PROGRAM

### Statements by Members

#### Length of statements: Speaker's discretion

February 29, 1988

*Debates*, p. 13224

**Context:** On February 29, 1988, Mr. Jim Hawkes (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) rose on a point of order to call attention to the fact that Members had a tendency to exceed the sixty seconds allotted for statements. Other Members also commented on this matter.<sup>1</sup> The Speaker made an immediate ruling, most of which is reproduced below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I, of course, want to thank all honourable Members for their interventions. The rule does, of course, call for 60 seconds. If one looks back over an extended period of time one will see that while there have certainly been occasions when the Chair has allowed an honourable Member to extend that time, especially if, at least in the opinion of the Chair, the issue was of some considerable importance, at other times, of course, the Chair has been more exacting.

However, with regard to the intervention of the honourable Parliamentary Secretary, I would hope that all honourable Members on both sides would do as much as they can to constrain themselves to a minute or less in the interests of their colleagues who, of course, will be prevented from making their statements if a number of honourable Members exceed the time allotted to them.

However, I take some comfort from the comments of the honourable Member for Windsor West (Hon. Herb Gray), the honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier), and the honourable Member for Kamloops—Shuswap (Mr. Nelson Riis). Their position that there has to be some flexibility shown from time to time by the Speaker with regard to the absolute strict application of the rules is, I am sure, shared by the honourable Parliamentary Secretary....

I welcome the comments which have been made from both sides of the House. I am sure we will all strive mightily to ensure that we conduct ourselves in here in such a way that we are being as fair as is reasonable to all other honourable Members. I thank honourable Members for their interventions.

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1. *Debates*, February 29, 1988, pp. 13223-4.

## THE DAILY PROGRAM

### Statements by Members

#### Guidelines: prohibition against personal attack on a Member

November 8, 1990

*Debates*, p. 15333

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**Context:** On November 8, 1990, during *Statements by Members*, Mr. Jim Karygiannis (Scarborough—Agincourt) began to make certain comments about other Members. He was interrupted and called to order by the Speaker who informed him that the rules pertaining to *Statements by Members* were clear and that Members could not use this period to attack a Member.<sup>1</sup> Later in the sitting, Mr. Karygiannis rose on a point of order to seek clarification. In his remarks, he alluded to a statement made the week before by Mr. Guy Saint-Julien (Abitibi)<sup>2</sup> and implied that a personal attack had been made by Mr. Saint-Julien on a Member and he had not been called to order by the Chair.<sup>3</sup> The clarification provided by the Speaker is reproduced below.

## DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member is asking for clarification. I can give the honourable Member clarification, and I shall.

On January 17, 1983, Madam Sauvé, then Speaker, touched on the question of what is appropriate comment in statements by Members.

The honourable Member who has risen was stopped by me earlier today after I listened for a few minutes, or at least some seconds, and it became clear, at least I thought it was clear, that the honourable Member was making a personal attack on another honourable Member.

As a consequence, I had to stand and interrupt him.

On January 17, 1983, Madam Sauvé said this: “The time set aside for Members’ Statements should not be used to make personal attacks.” She went on and said: “It is clear that personal attacks are not considered to be matters that should be raised....”<sup>4</sup>

That is the rule that we have tried to follow in this House. It may well be that that rule has been transgressed, and I might have missed it.

I assure the honourable Member that I do listen carefully. If I erred in letting that rule be transgressed at some other time, then I very much regret it. I think that we must bear with the rule and I think that that is the general feeling of the House.

I thank the honourable Member for raising it. If he would like to discuss it further with me, of course he can see me in my chambers.

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1. *Debates*, November 8, 1990, p. 15318.
2. *Debates*, November 1, 1990, p. 14994.
3. *Debates*, November 8, 1990, p. 15333.
4. *Debates*, January 17, 1983, p. 21874.

## THE DAILY PROGRAM

### Statements by Members

Guidelines: prohibition against personal attacks; alleged unfair treatment by the Speaker; congratulatory remarks

November 26, 1990

*Debates*, p. 15717

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*Context:* On November 26, 1990, Mr. David Dingwall (Cape Breton—East Richmond) rose on a point of order to seek clarification of the provisions of the Standing Order pertaining to Statements by Members. He said he felt the Chair treated Members differently, depending on their political affiliation. Mr. Dingwall referred to two instances where the Chair had interrupted Liberal Members while they were making statements. They involved Mr. Jim Karygiannis (Scarborough—Agincourt)<sup>1</sup> and the Hon. Roger Simmons (Burin—St. George's).<sup>2</sup> He pointed to the fact that the Speaker had not called Mr. Guy Saint-Julien (Abitibi) to order on November 1, 1990,<sup>3</sup> even though, in his opinion, this situation was comparable to the two others cited.<sup>4</sup> The Speaker clarified immediately some of the restrictions on Statements by Members as well as some of the difficulties encountered in applying the pertinent Standing Order. His comments are reproduced in their entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I would like to assure the honourable Member that the Chair, as much as is humanly possible, would not ever treat one honourable Member differently than the others.

A few days ago I said to the honourable Member for Scarborough—Agincourt that it may well have been that something slipped by my careful consideration. That is not satisfactory, but perhaps that is what happened. With respect to the honourable Member for Burin—St. George's, I would be very pleased to go over the transcript. I might also ask the honourable Member to give me in full what it was he intended to say.

We will try to keep within the bounds of the prescription of Madam Sauvé of some years ago, in that Statements by Members are not supposed to make a personal attack on a Member.<sup>5</sup> I recognize that that gets a little difficult sometimes, especially when what is being attacked is a political position taken by the Member.

Madam Sauvé also commented on the fact that congratulations are really not the purpose of Members' Statements. I received a note today from one honourable Member who is very diligent on these matters, pointing out that it may not have been appropriate to offer congratulations to the Winnipeg team.<sup>6</sup> I felt constrained, despite the fact that there have been comments by past Speakers, I was not sure that to restrain honourable Members in congratulating the winner of the Grey Cup would make any friends in the Chamber at all.

However, it is a difficult line sometimes to find. It is doubly difficult because the Chair cannot always be sure of exactly where the statement is going. If it is giving Members trouble and difficulties, I would be very pleased to discuss it and to see if we can straighten it out. It is not my purpose to leave even an impression that one Member is getting treatment that is not available to another Member.

I would ask all honourable Members because it is an important matter, to be very careful in giving Members' statements. If it is strictly a comment upon a political position, that is one thing. If it passes over that and becomes a personal attack, then we have tried to stay away from that sort of thing.

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1. *Debates*, November 8, 1990, p. 15318.
2. *Debates*, November 19, 1990, p. 15382.
3. *Debates*, November 1, 1990, p. 14994.
4. *Debates*, November 26, 1990, p. 15717.
5. *Debates*, January 17, 1983, pp. 21873-4.
6. *Debates*, November 26, 1990, pp. 15704-5.

## THE DAILY PROGRAM

### Oral questions

#### Introduction

Oral Question Period indisputably receives the most media attention of any of Parliament's activities. Forty-five minutes long, it is part of every normal sitting of the House, coming immediately after Statements by Members.

The Speaker's role during Question Period is to ensure that the rules of order and procedure are followed; it is not his or her role to comment on the content of the answers, or their usefulness.

The Standing Orders provide that questions must be on "matters of urgency" and addressed to a Minister of the Crown. During his term, Speaker Fraser was called upon to rule on whether certain of these questions were in order or not. Ten rulings are included in this section of the chapter.

One important ruling found that questions about Order-in-Council appointments were in order even if the appointment at issue had been referred to a parliamentary committee. Speaker Fraser also ruled that backbench Members of the governing party could, like their Opposition counterparts, pose legitimate questions to the Government, bearing in mind at the same time that the main purpose of Question Period was to make the Government accountable for its actions.

## THE DAILY PROGRAM

### Oral Questions

Government appointments; administrative responsibilities of the Government

February 12, 1992

*Debates*, p. 6860

**Context:** On February 11, 1992, during Oral Question Period, Mr. Jean-Robert Gauthier (Ottawa—Vanier) questioned the Government about its intentions in the wake of criticisms of bilingualism in the federal Public Service expressed by Mr. John Crispo (appointed by the Government to the CBC's Board of Governors) during a radio interview.<sup>1</sup> The Speaker ruled that the question did not fall within the Government's administrative responsibilities. Later on in the course of the sitting, Mr. Gauthier rose on a question of privilege, alleging that his rights had been violated during Oral Question Period. Basing himself on *Beauchesne* Fifth Edition, Citation 359, which sets out the principles for finding a question to be in order or not, Mr. Gauthier argued that his question was in order because it concerned an individual appointed by the Government and because the incidents at issue came within the Government's administrative competence. A discussion ensued.<sup>2</sup> After hearing from a number of Members, the Speaker took the matter under advisement, handing down his ruling on the following day. It is reproduced in full below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I promised yesterday that I would return with respect to a question which was put by the honourable Member for Ottawa—Vanier yesterday, a question on a subject that is of course very important to all Members of this House.

I think honourable Members will remember that yesterday I said there were really two issues. One is whether the question as put was in or out of order. The second is whether the subject matter of the question can be pursued in the Chamber.

I think I was correct in clearly pointing out to the House that there were two issues.

The issue I have to decide is whether the question as put was within the rules. I should say to honourable Members that the substance of the issue concerned comments made by a Canadian who was appointed to a board by the Government of Canada relating to the question of bilingualism.

I have looked very carefully at the question as put which was:

Will the Prime Minister call Mr. Crispo, tell him that the impression he left with his comments is wrong, dead wrong, absolutely wrong? Will he ask Mr. Crispo to get his facts straight or keep his mouth shut?

... I must respond to this issue in a purely procedural manner. My judgment yesterday was that it is out of order as asked; it is not seeking information.

I still maintain that as asked it is not within the administrative competence of the Government.

Having said that, as I think all honourable Members conceded yesterday, the issue is of importance. The honourable Government House Leader (Hon. Harvie Andre) said:

... I can say on behalf of the Government with assurance that Mr. Crispo does not speak for the Government of Canada.

Now at that point we had some discussion as to the question and perhaps we were also getting on to some discussion of the issue itself. I have to say that I remain with my ruling of yesterday. I am also indicating to honourable Members that there are probably other ways to pursue the issue in Question Period.

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1. *Debates*, February 11, 1992, pp. 6767-8.
2. *Debates*, February 11, 1992, pp. 6770-4.

## THE DAILY PROGRAM

### Oral questions

Admissibility of questions; Order-in-Council appointments referred to committee

December 11, 1986

*Debates*, pp. 1997-9

**Context:** On November 6, 1986, the Hon. Don Mazankowski (Deputy Prime Minister and President of the Privy Council) rose on a point of order to object to the fact that Members had been allowed in the preceding weeks to question Ministers during Question Period about certain Order-in-Council appointments that had been referred to standing committees. He argued that such questions were out of order because they dealt with matters that were before a committee. Other Members expressed reservations about the Deputy Prime Minister's arguments.<sup>1</sup> The Speaker took the matter under advisement and handed down his ruling on December 11, 1986. It is reproduced in full below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On November 6, 1986, the honourable Deputy Prime Minister rose on a point of order relating to the appropriateness of questions asked during Question Period relating to Order-in-Council appointments which are currently before standing committees pursuant to Standing Order 103. The specific point the honourable Deputy Prime Minister made was that such questions might be out of order when the matter is before, or has the opportunity of being before, a committee.

The honourable Member for Kamloops—Shuswap (Mr. Nelson Riis) expressed some concerns about the contention that Beauchesne Citation 357 might be made to apply in this case and more particularly about the view that if such matters have the opportunity to be before a committee, they ought not to be raised in the House during Question Period.

Although the honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier) acknowledged the possibility of duplication, he pointed out that certain questions regarding the behaviour and conduct of delegates were in the public domain and could thus appropriately be raised during Question Period.

In the report of the Special Committee on the Reform of the House of June, 1985 at page 34 is the following somewhat prophetic and relevant sentence:

In making recommendations regarding scrutiny and confirmation of certain appointments, we are heading into uncharted waters.

The Chair fully agrees with that statement and believes it would be useful at the outset of this ruling to review the content of Standing Orders 103 and 104.

Standing Order 103 provides that a Minister of the Crown shall lay upon the Table a copy of appointments made by Order in Council not later than five sitting days after the Order in Council is published in the *Canada Gazette*. At the time of tabling, they are referred to a specified committee for a period not exceeding thirty sitting days.

Standing Order 104 provides that a specified committee shall, if it deems it appropriate, call appointees or nominees for a period not exceeding 10 sitting days. That same Standing Order clearly states that the committee shall examine the qualifications and the competence of the appointees. It is the opinion of the Chair that the committee's powers of examination are narrowly limited to the qualifications and competence to perform the duties of the post, and questions in committee and reports thereon ought to be strictly relevant to such qualifications, competence and performance of duties.

The Chair should add that it is not imperative for a committee to review Order-in-Council appointments that have been referred to it, since Standing Order 104 specifies it is up to the committee to decide which Order-in-Council appointments will be reviewed, if any.

In attempting to address the issue of questions relating to Order-in-Council appointees or nominees being allowed in Question Period, I believe it is useful to make an analogy with the specific mandates of two other committees. Standing Order 96(3)(f) provides for the referral of all reports of the Auditor General to be deemed permanently referred to the Public Accounts Committee immediately they are laid upon the Table. Standing Order 96(4)(a) provides that the annual report of the Commissioner of Official Languages shall be deemed permanently referred to the Standing Joint Committee on Official Languages immediately it is laid upon the Table.

Is it, therefore, a breach of our rules for Members of the House to ask questions in Question Period relating either to the Auditor General's or the Commissioner of Official Languages' reports simply because they have been referred to their respective committees upon tabling and certainly have the opportunity to be considered by these committees? While there are no specific rulings on this point, a review of our records did not produce any objections by honourable Members to questions during Question Period on reports of the Auditor General or the Commissioner of Official Languages. Indeed, *Hansard* abounds with many questions posed to the front benches on the above-mentioned reports after they were referred to the committees concerned.

The honourable Member for Kamloops—Shuswap remarked quite correctly that the authority of the new standing committees in the House is now so broad that practically all questions raised during Question Period would be out of order if it depended on whether or not they were being reviewed by a standing committee.

In his statement to the House on April 14, 1975, relating to Question Period, Speaker Jerome stated:

Much has been said in the precedents about restrictions and disqualifications or interferences with the right of Members to put questions. This is not the approach I prefer to take in attempting to establish a rational approach and understanding concerning how the question period should operate. I much prefer to take the positive approach of attempting to arrive at a statement of principle within which questions can be put and to reduce to an absolute minimum the negative disqualifications that may limit or restrict a Member's right so to do.<sup>2</sup>

Guided by that principle, the Chair has chosen to rule that in general, questions to the Ministry relating to Order-in-Council appointments are in order, particularly if they are within the administrative competence of the Government. Conversely, I must tell the House, as I did on November 6, that out of concern for good manners, out of fairness and without impinging on the duty of all honourable Members to be diligent on matters of public interest, I will not hesitate to rule questions out of order if I feel that the bounds have been exceeded.

The Chair wishes to thank the honourable Deputy Minister for having raised the matter, and is also grateful for the contributions of the honourable Member for Kamloops—Shuswap and the honourable Member for Ottawa—Vanier. I must add that the Chair feels reassured that in this new process of review of Order-in-Council appointments, jurisprudence that will reinforce Standing Order 103 and 104 will eventually emerge.

I think the Chair can also add on the basis of fairness that the citizens who appear before these committees have probably never gone through a procedure such as this before. It behoves all honourable Members to recognize that these citizens are serving our country and that questions concerning them that are appropriate before the committee ought to be put in a manner of good will and care for the sensibilities of ordinary citizens who, as I say, would probably never in their lives, if they are lucky, have to appear before a group who are asking them a lot of questions that they had never, in some circumstances, anticipated.

I know that honourable Members who have had some experience with the law, whether as litigants or as members of the Bar, will know that one of the most awesome things a citizen is called upon to do is to be a witness in a proceeding. I would ask all honourable Members to take special care, when citizens have responded to the request of the Government of Canada to serve, that they are treated with appropriate courtesy and fairness at all times when appearing before committees.

Again, I wish to thank the honourable Deputy Prime Minister for bringing this matter to the attention of the Chair and I hope the remarks of the Chair will assist all honourable Members and the committees in providing fair and proper treatment for the citizens who come before them.

**Postscript:** Following the Speaker's ruling, Mr. Mazankowski rose on a point of order to ask if notwithstanding the fact that a person may be before a committee under the provisions of Standing Orders 103 and 104, during the course of his or her examination, the Speaker would allow questions in the House. Speaker Fraser responded that, in general terms, honourable Members ought not to be forbidden from raising a question in the Chamber and that he would take each of those questions and consider them carefully at that time in the context of what was happening.

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1. *Debates*, November 6, 1986, pp. 1151-3.
2. *Debates*, April 14, 1975, p. 4762.

**THE DAILY PROGRAM**

## Oral questions

Anticipating Orders of the Day; right of a Minister not to answer a question

March 19, 1991

*Debates*, p. 18675

**Context:** *On March 19, 1991, during Oral Question Period, the Hon. Perrin Beatty (Minister of National Health and Welfare) asked the Speaker to rule on whether Mr. Beatty should reply to questions put to him by Mr. Rey Pagtakhan (Winnipeg North) that dealt with the topic set for debate under the Orders of the Day.<sup>1</sup> The Speaker's ruling is reproduced in full below.*

**DECISION OF THE CHAIR**

**Mr. Speaker:** The honourable Minister has made reference to a long-standing rule in the House that questions ought not to anticipate the Order of the Day. Despite that the Minister has, as is his right and if he wishes to, responded. This question is clearly taken right out of the debate which has been taking place in this House. I think I have to say that it is out of order. If the Minister wishes to reply, he can, but he does not have to. I want to make it very clear that the Minister does not have to reply.

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1. *Debates*, March 19, 1991, p. 18674.

**THE DAILY PROGRAM**

Oral questions

Right of a Minister not to answer a question

September 26, 1988

*Debates*, p. 19623

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*Context:* On September 26, 1988, during Oral Question Period, Mr. Don Boudria (Glengarry—Prescott—Russell) attempted to question the Hon. Stewart McInnes (Minister of Public Works) about a matter under investigation by the Royal Canadian Mounted Police.<sup>1</sup> The Minister had previously indicated he preferred to wait until the investigation was completed before answering any questions. The Speaker interrupted Mr. Boudria to remind him that a Minister always has the right not to answer a question. His remarks are reproduced in full below.

**DECISION OF THE CHAIR**

**Mr. Speaker:** I know the honourable Member would want the Chair to make the rulings on procedure. It may well be that the question is out of order once a criminal prosecution has begun. The honourable Member quotes Beauchesne. It is, nonetheless, always within the prerogative of a Minister not to answer a question. If the Minister responds and says that in the opinion of the Crown, the Minister, or the Government, because of an investigation it would be inappropriate to answer, one can argue as to whether the Minister is right or wrong, but that is the position that the Minister has taken and I cannot force the Minister to answer that question no matter what citations may exist in Beauchesne.

I only say this because, in view of the subject matter and the vigorous questioning, all honourable Members, and the public who are watching, should understand the procedural laws, of which I have to remind Members from time to time.

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1. *Debates*, September 26, 1988, pp. 19617, 19622-3.

## THE DAILY PROGRAM

### Oral questions

Allocation of time among questioners; supplementary questions; Speaker's list; independent Members

June 19, 1991

*Debates*, pp. 2071-2

**Context:** *On June 19, 1991, Mr. Pat Nowlan (Annapolis Valley—Hants) rose on a point of order to ask the Speaker if there was any place for a supplementary question during Oral Question Period. He then asked if the Chair was bound to follow a set list in recognizing Members.<sup>1</sup> The Speaker's reply is reproduced below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** Perhaps I can help the honourable Member. First of all, I am not revealing a great secret when I say that of course there is a list. The honourable Member has often been on that list. Your Speaker is not necessarily bound by the list, although I always try to co-operate as much as I can. I could even tell the House how we got to the list. The honourable Member knows very well how we got to the list. It was through great discipline in keeping just one Member of the party up in opposition so there was only one person the Speaker could go to. There is no secret about a list, and the honourable Member knows as much about lists as any Member in the House.

The other question the honourable Member poses is whether there is any place for the independent Member or for a supplementary upon certain occasions.

Of course there is. The honourable Member was recognized for a supplementary only a few days ago. I have often gone to Members for a supplemental. However, I have to take into account the number of Members who are seeking the floor and what is happening on any given afternoon. The honourable Member knows I cannot satisfy everybody on every afternoon. That is a matter which my honourable friend who may be rising later on a point of order may come back to.

I appreciate the honourable Member's intervention and my answer is yes, there is a list. I am not bound by it. I can ignore that list and intervene to allow private Members, wherever they are, not only to ask questions but also to ask supplements. That is a right which remains with the Chair and I do not think it has ever been seriously challenged. I would remind all honourable Members that it is a right which the Chair has had almost since: "The memory of man runneth not to the contrary".

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1. *Debates*, June 19, 1991, p. 2071.

## THE DAILY PROGRAM

### Oral Questions

Allocation of time among questioners; backbench Members of the governing party

January 30, 1987

*Debates*, p. 2922

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**Context:** *On January 30, 1987, Mr. Reginald Stackhouse (Scarborough West) rose on a question of privilege to call for better allocation of the time given to private Government Members during Question Period. After listening to Mr. Stackhouse's comments and those of other Members,<sup>1</sup> the Speaker handed down his ruling immediately. It is reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** The Chair has listened carefully to the intervention of the honourable Member, and to other comments.

Fairly recently the Chair indicated to the House that the Chair is very much aware of the fact that there are a great many Members in this Chamber, many of whom have legitimate and diligent questions to put to the Government. I think the Chair has made it clear that when that is the case, and when it is obvious to the Chair that that is the case, questions have been allowed to Members of the Government side. I am quick to point out that when those questions are what they ought to be, that is diligent and searching, Members of the opposition have not objected, for which I am grateful.

The honourable Member is understandably concerned that because of attention on the Question Period, and perhaps because sometimes the Question Period does not move as rapidly as I am sure honourable Members would like because of the length of questions and the length of responses, perhaps Government Members are neglected. I will strive to ensure that that is not the case.

However, I want to say to Government Members that the Chair is aware that they, too, are here representing constituencies and that they, too, have a right to speak. Honourable Members will have noted that not only has the Chair recognized Government Members, whose names were not necessarily on a list brought to the Speaker, who rose and showed to the Speaker that they indeed were seeking recognition on an important matter, but the Chair has also recognized supplementary questions from Government Members, as in fact was the case today.

With respect to the other point, Question Period is a unique institution. At its best it is something of which Canadians can be very proud. At its best it is an intelligent accountability session for any Government—at its best. It is not always at its best, as honourable Members know. But that is my problem and I have to do what I have to do to ensure that Question Period is at its best as often as possible.

The comments of honourable Members are important, especially the comments of the honourable Member for Saint-Denis (Mr. Marcel Prud'homme), that this is our institution and it has customs and traditions which are unique to us. While sometimes visiting dignitaries from other lands may wonder at the way we meet, usually after lunch, nonetheless it is our institution for better or worse.

The Chair, while recognizing that all honourable Members have a right to be heard during Question Period, also recognizes that it is very much an accountability session. That is our tradition. I thank the honourable Member for raising this matter because it is an appropriate time for the Chair to say something about it. I will endeavour to be as fair and as even as I can be, recognizing that Question Period is an accountability session and that there are serious and proper questions coming from Government Members. I shall try to see those Government Members when those questions arise.

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1. *Debates*, January 30, 1987, pp. 2920-2.

## THE DAILY PROGRAM

Oral questions

Questions put by Parliamentary Secretaries

October 1, 1991

*Debates*, p. 3001

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*Context: On October 1, 1991, during Routine Proceedings, Mr. Bill Blaikie (Winnipeg Transcona) rose on a point of order to point out that during Oral Question Period on the previous day, the Parliamentary Secretary to the Minister of State (Finance and Privatization), Mr. Peter McCreath, had put a question.<sup>1</sup> Mr. Blaikie claimed that this was the second time in a matter of weeks that a Parliamentary Secretary had put a question. He asked the Speaker for assurance that these incidents had been errors, since this practice was not an established one in Canada, and said that the conclusions of the Standing House Management Committee's subcommittee on the format and nature of Question Period should not be anticipated.<sup>2</sup> The Speaker's ruling is reproduced in full below.*

## DECISION OF THE CHAIR

**Mr. Speaker:** I want to respond immediately to the honourable Member for Winnipeg Transcona. He raises a point and he is correct that twice within the last couple of weeks a Parliamentary Secretary has been recognized.

I want to say first of all to the honourable Member and to the House that that was an inadvertence and an oversight on my part for which I apologize if it has caused any anxiety.

I want to make it very clear that the Sixth Edition of *Beauchesne*, Citation 413, deals with questions by Parliamentary Secretaries and I read the section:

Those such as Parliamentary Secretaries who are clothed with the responsibility of answering for the Government ought not to use the time of the Question Period for the privilege of asking questions of the Government.

It cites *Debates*, November 5, 1974, pages 1059-64.

That practice has been adhered to and there may have been a slippage out of inadvertence, but that practice has been adhered to and I want to assure the House that I am not unilaterally changing the practice.

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1. *Debates*, September 30, 1991, p. 2916.

2. *Debates*, October 1, 1991, p. 3001.

**THE DAILY PROGRAM**

Oral questions

Question unrelated to ministerial activity

January 26, 1987

*Debates*, p. 2685

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**Context:** On January 26, 1987, during Oral Question Period, the Speaker interrupted Mr. Michael Cassidy (Ottawa Centre), who was questioning the Hon. Don Mazankowski (Deputy Prime Minister and President of the Privy Council) about the activities of a corporation.<sup>1</sup> The Speaker told Mr. Cassidy that he could not allow the question as framed, because it had no bearing on the Minister's area of responsibility. He invited Mr. Cassidy to rephrase the question in light of these observations. His ruling is reproduced in full below.

**DECISION OF THE CHAIR**

**Mr. Speaker:** I must say to the honourable Member, with great regret, that that question clearly involves activities which are not related to any Minister of the Government or to the Prime Minister. It is outside the ambit of ministerial responsibility.

Under the circumstances, honourable Members have been asking for a public inquiry and I have allowed those questions. The Government has responded, as is recorded in *Hansard*. The question now being put is directed at some activity outside this place and outside the responsibility of a Minister.

The rules are quite clear. The Chair cannot allow the question. Perhaps the honourable Member could seek to find the information he wishes or seek to find the intentions of the Government by rephrasing the question, keeping in mind the admonishment of the Chair.

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1. *Debates*, January 26, 1987, p. 2684.

## THE DAILY PROGRAM

### Oral questions

Government's administrative responsibilities; questions not to create disorder

August 22, 1988

*Debates*, p. 18615

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**Context:** *On August 22, 1988, during Oral Question Period, the Hon. Robert Kaplan (York Centre) began to question the Hon. Don Mazankowski (Deputy Prime Minister and President of the Privy Council) about the expulsion of a Member belonging to the Progressive Conservative Caucus.<sup>1</sup> The Speaker interrupted Mr. Kaplan to remind him that questions put to the Government must have to do with administration of public affairs and must not create disorder. His ruling is reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** .... The honourable Member may be rising on a matter of considerable political interest, and there certainly may be other places to pursue it, but I am having some difficulty here because, as honourable Members know, a question directed to the administration has to deal with the administration of government. So far the honourable Member is not persuading me that that question does involve the administration of government. Perhaps the honourable Member can help the Chair....

The difficulty the Chair is in is that the rules by which we are bound are designed ultimately and primarily so that questions do not create disorder and, second, that they be pertinent to the administration of the Government. The honourable Member, I know, understands this, and I would ask him to put his question. Otherwise, I may have to move on to another Member.

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1. *Debates*, August 22, 1988, p. 18615.

## THE DAILY PROGRAM

### Oral questions

Question found out of order; matter questioned was under advisement by the Speaker

May 22, 1987

*Debates*, pp. 6337-8

**Context:** *On May 22, 1987, during Oral Question Period, Mr. Ian Waddell (Vancouver—Kingsway) directed a question to the Hon. Don Mazankowski (Deputy Prime Minister and President of the Privy Council) about an alleged conflict of interest involving the Hon. Harvie Andre (Minister of Consumer and Corporate Affairs).<sup>1</sup> The Speaker interrupted Mr. Waddell to remind him that the previous day he had allowed Mr. Andre to raise a question of privilege and that this matter was still under advisement.<sup>2</sup> The Speaker's ruling is reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** The Chair is in a difficult position, and I know that the honourable Member for Vancouver—Kingsway understands that, as does the honourable Member for Cape Breton—The Sydneys (Mr. Russell MacLellan). Also I want honourable Members to understand clearly the difficulty the Chair is in, and I want the public to understand it, because this is a place where vigorous free speech must be defended.

My difficulty is that yesterday, on a matter raised by the honourable Member for Vancouver—Kingsway, questions which the Chair allowed, a question of privilege has been raised by the honourable Minister. There was an extensive discussion with respect to whether or not the question asked of the Minister yesterday was appropriate or had indeed infringed against the privileges of the Minister, and some Members went on to suggest that it had gone further than that.

I have not brought down a ruling on that matter yet, as the honourable Member for Vancouver—Kingsway knows, and I regret that I have not been able to do so by this morning. However, I assure the honourable Member that it is not because of any intention to delay.

An honourable Member was in somewhat the same position some weeks ago on another matter where a question of privilege was raised and then the next day questions were again asked on the same point. At that time I said that I felt it was not appropriate to continue with those questions at that time until the ruling had come down.

Given the circumstances and given that fact, I want to assure the honourable Member for Vancouver—Kingsway and other honourable Members who are interested in this issue that I will strive mightily to have a ruling first thing on Tuesday morning. In the meantime, I would ask the co-operation of honourable

Members in respecting the position of the Chair, and to respect the fact that the very propriety of these questions is the subject matter of the dispute which I heard yesterday and on which I must decide.

I am not in any way indicating how I will rule on Tuesday morning, but I would ask that honourable Members understand the position that we are in in this Chamber.

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1. *Debates*, May 22, 1987, p. 6337.
2. *Debates*, May 21, 1987, pp. 6299-306.

## THE DAILY PROGRAM

### Routine Proceedings

#### Introduction

The items collectively known as “Routine Proceedings” comprise Tabling of Documents, Statements by Ministers, Presenting Reports from Inter-Parliamentary Delegations, Presenting Reports from Committees, Introduction of Government and Private Members’ Bills, First Reading of Senate Public Bills, Motions, Presenting Petitions, and Questions on the *Order Paper*.

#### *Tabling of Documents*

Many statutes and Standing Orders require that reports, returns or other documents be laid before the House. Certain Crown corporations and federal advisory boards, for example, must, according to statute, make annual reports through the appropriate Minister to the House. Pursuant to Standing Order, the Government may table responses to committee reports or to petitions presented by Members, Order-in-Council appointments or nominations, or any report or other paper dealing with its administrative responsibilities.

The Standing Orders determine, by distinguishing between the various types of documents being tabled and the authority under which they are tabled, whether the Minister or Parliamentary Secretary must table such documents in the House when the item “Tabling of Documents” is called or whether such documents can be deposited with the Clerk of the House, a practice known as “backdoor tabling”.

During his term, Speaker Fraser was called upon to rule on an alleged absence of information in a report which had been deposited with the Clerk of the House pursuant to an Act of Parliament. That ruling has been included in this section of Chapter 3. Other decisions pertaining to the tabling of documents can be found in the chapters dealing with “Parliamentary Privilege”, “The Rules of Debate” and “Committees”.

#### *Statements by Ministers*

When the item “Statements by Ministers” is called, a Minister may make a short factual statement on matters of Government policy. A representative of each opposition party may then comment on the Minister’s remarks. The Speaker may limit the length of the remarks and responses as he sees fit.

During Speaker Fraser’s mandate, few points of order or questions of privilege were raised during this portion of Routine Proceedings. Nevertheless, he was asked to clarify the application of, and the issue of respect for, the Standing Orders and traditions governing Ministers’ Statements. For example, he insisted on the importance of the advance notice given to opposition parties. He also

delivered a ruling on the parties authorized to respond to a statement made by a Minister. Finally, he commented on announcements made by Ministers outside the House.

#### *Presenting Reports from Inter-Parliamentary Delegations*

The Standing Orders provide that within twenty sittings days of the return to Canada of an officially recognized inter-parliamentary delegation composed, in any part, of Members of the House, the head of the delegation (or a Member representing that person) is to present a report to the House on the activities of the delegation. The Member presenting the report is permitted to make a succinct oral presentation of the subject-matter of the report.

No major points of order or questions of privilege were raised on this matter during Speaker Fraser's term, and thus no rulings are included under this rubric.

#### *Presenting Reports from Committees*

Standing, special and legislative committees make their views known to the House by means of a report. The Member presenting the report on behalf of the committee is permitted to give a succinct explanation of the subject-matter of the report. The Standing Orders do not provide for the tabling of a minority report.

However, since May 1991, committees are authorized, if they so wish and so agree, to print an *appendix* to any report containing supplementary or dissenting opinions or recommendations. Upon presentation of a report with such an appendix, a committee member of the Official Opposition, representing those who supported the opinions expressed in the appended material, may also rise to give a succinct explanation of these views.

During Speaker Fraser's term, he was called upon to make a number of decisions concerning committees and committee reports. A decision, impacting directly on practice during "Routine Proceedings", is included in this chapter. Other decisions on committee reports can be found in the chapters on "Committees" and "The Legislative Process".

#### *Introduction of Bills*

At the beginning of Speaker Fraser's term, the rubric in the Standing Orders was entitled "Introduction of Public Bills". Following amendments to the Standing Orders in June 1987, however, the rubric was divided into two separate items: "Introduction of Government Bills" and "Introduction of Private Members' Bills".

The ruling in this section is concerned with the issue of whether a Cabinet Minister can give a short explanation of a Government Bill at the time of introduction.

Some additional rulings on procedural points concerning the introduction of bills are found in the chapters on “The Legislative Process”, “Financial Procedures”, and “Private Members’ Business”.

### *First Reading of Senate Public Bills*

When the item “First Reading of Senate Public Bills” is called from the Chair under Routine Proceedings, the sponsoring Member or Cabinet Minister may move first reading of any bills then listed on the *Order Paper* under that rubric. Pursuant to Standing Order, the motion for first reading is now deemed carried, without debate, amendment or question put.

No major points of order or questions of privilege were raised on this matter during Speaker Fraser’s term, and thus no rulings are included under this rubric.

### *Motions*

The types of motions normally moved under this heading are those relating to the business of the House, usually moved by the Government, or those relating to the discussion of committee reports, usually moved by a private Member. The Standing Orders enumerate other types of motions that may be presented during Routine Proceedings: “such other motion, made upon Routine Proceedings, as may be required for the observance of the proprieties of the House, the maintenance of its authority, the appointment or conduct of its officers, the management of its business, the arrangement of its proceedings, the correctness of its records, the fixing of its sitting days or the times of its meeting or adjournment.” The motions listed in this Standing Order and motions for the concurrence in a report of a standing or special committee are debatable.

In April 1991, a new Standing Order (then numbered 56.1) was adopted by the House and impacted on the rubric “Motions”. In essence, the rule provided that if unanimous consent for a routine motion had previously been requested and denied, a Minister of the Crown could rise during Routine Proceedings to request that the motion in question again be put to the House. The question on the motion was then to be put forthwith without debate or amendment. If twenty-five or more Members rose against the motion, it was deemed withdrawn; otherwise, it would be deemed adopted.

This section of the chapter contains three rulings. When Speaker Fraser was first elected to the Chair, the ordinary way of proceeding when the item “Motions” was reached was to call the names of each of the Members who had motions listed under that rubric and to inquire whether the motion should “stand”. Less than a year later, the Speaker was asked to alter this method of proceeding. His decision in this regard is the first ruling concerning “Motions” in this section.

The Speaker was also called upon frequently to decide whether items were correctly placed on the *Order Paper* under the heading “Motions”, as opposed to “Government Notices of Motion” or “Private Members’ Business”. Two of his key rulings on the issue of proper placement are to be found in this section of the chapter.

Other rulings concerning the placement of motions on the *Order Paper*, and a ruling on the proposed new Standing Order (S.O. 56.1) pertaining to certain routine motions put forward by a Cabinet Minister mentioned above, can be found in the chapter on “The Decision-Making Process”.

#### *Presentation of Petitions*

On each sitting day, Members may rise in the House to present petitions when the item “Presentation of Petitions” is called. Once recognized by the Chair, the Member may make a very brief statement on the content of the petition. The petition itself may not be read and no debate is permitted. Every petition has to be examined and certified correct as to form and content by the Clerk of Petitions before it can be presented. A Member may also file a certified petition with the Clerk of the House at any time during a sitting, and it will be so recorded in the official record of proceedings. The Government is to respond to every petition referred to it within forty-five days following presentation.

During Speaker Fraser’s term, the text of the Standing Order and the practices relating to petitions changed very little, with the exception that amendments to the Standing Orders adopted in April 1991 provided that the time to be taken up under the rubric “Presentation of Petitions” each day could not exceed fifteen minutes. Prior to that date, the time taken up under this rubric had been unlimited and was sometimes used as a tactic to delay other proceedings.

This section of the chapter contains six rulings addressing matters related to, among other issues, the content of and signatures on petitions; the authority for Members to present petitions endorsed by another Member; the appropriateness of certain statements made when presenting petitions and the right to be recognized a second time during presentation of petitions; the rules respecting the time-frame for the Government’s response; and the long-standing prohibition against directly seeking funds from Parliament. A further key ruling concerning the applicability of the Standing Order respecting petitions to a petition for a private Bill is located in the chapter on “Private Members’ Business”.

#### *Questions on the Order Paper*

Members may address questions on matters of urgency without notice to the Government during Oral Question Period. Members may also submit written questions, most of which require a long, detailed or technical answer for inclusion, following notice, on the *Order Paper*. No Member may have more than four such questions on the *Order Paper* at any time; when notice of the question is given, the Member may ask the Government to answer within a 45-day period. A Member

may also request an oral response to a question on the *Order Paper*, by marking it with an asterisk. No Member may have more than three such “starred” questions on the *Order Paper* at any one time.

When the item “Questions on the *Order Paper*” is called under Routine Proceedings, a number of practices govern proceedings at this stage. For instance, the Minister or, more frequently, a Parliamentary Secretary rises to announce which questions the Government intends to answer on that particular day, whether by tabling the answers (which will then be published in the *Debates*); whether by providing an oral answer; or whether by making the question an “order for return”.

Members have used this point of the parliamentary proceedings to raise any major questions of privilege or points of order concerning *Order Paper* questions and the Government’s replies. During Speaker Fraser’s term, he was called upon frequently to rule on such matters. Three rulings are included in this chapter which concern, among other issues, the failure of the Government to reply within the specified forty-five day period; the appropriateness of the Government including additional information in the answer which had not been sought in the original question; and a request to transfer *Order Paper* questions into “Notices of Motions for the Production of Papers”.

## THE DAILY PROGRAM

### Routine Proceedings

Tabling of documents: respect for statutory requirements; designation of a committee to consider a report required by statute

June 29, 1987

*Debates*, p. 7750

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*Context:* On June 26, 1987, Mr. Keith Penner (Cochrane—Superior) rose on a point of order following the tabling of a report as required by the *Indian Act*. His point of order was twofold. First, he noted that the section of the Act under which the report was tabled stipulated that such reports must provide detailed information on the impact of certain amendments. Mr. Penner argued that the report contained no such information and that this omission constituted a statutory avoidance. He asked the Speaker to indicate what recourse was available to the House when a Minister's statutory obligation is inadequately fulfilled.

Second, the Act provides that a committee of Parliament must review the report once it has been tabled. Because the exact wording was "a committee of Parliament," Mr. Penner argued that a special joint committee should be established and mandated specifically to review the report: simply referring it to a standing committee would not, in his opinion, meet the requirements of the Act. He pointed out that where a statute and a Standing Order conflict, it is the statute that takes precedence, so that the Standing Order providing for referral to a standing committee of "reports laid before the House in accordance with an Act of Parliament" would not apply in this case. This was in his view especially important in that the standing committee in question rarely met and barely functioned. Mr. Penner therefore asked the Speaker to rule that the report should not be referred to the Standing Committee on Aboriginal Affairs and Northern Development. Other Members also addressed this point of order. The Speaker took the matter under consideration,<sup>1</sup> and handed down his ruling on June 29, 1987. The greater part of his decision is reproduced below.

## DECISION OF THE CHAIR

**Mr. Speaker:** I shall now deal with the point of order raised on June 26 by the honourable Member for Cochrane—Superior [....] He argued that the report to Parliament tabled by the honourable Minister of Indian Affairs and Northern Development (Hon. Bill McKnight) on the implementation of the 1985 changes to the *Indian Act* failed to meet the requirements of the statute on two counts. He claimed that it did not provide the complete response required by the statute and that the standing committee of this House to which the report was referred is not the appropriate committee.

I will deal with the second point first. The Act refers to a committee of Parliament, and the honourable Member contends that this can only mean a special joint committee of both Houses appointed *ad hoc* to consider the report.

While the interpretation of statutes is not a function of the Chair, I think it can be said that any committee of this House or of the other place, or a joint committee, must be a committee of Parliament. Therefore I can find no procedural violation in the reference of the report to the Standing Committee on Aboriginal Affairs and Northern Development pursuant to Standing Order 67(4).

I would suggest, however, that the committee has a clear duty to examine the report to enable the honourable Member for Cochrane—Superior and other members of the committee to express any concerns they may have in the light of the report.

As to the adequacy or inadequacy of the response provided by the report, I can only repeat what I said earlier in ruling on the question of privilege of the honourable Member for Nickel Belt (Mr. John Rodriguez).<sup>2</sup> The Chair cannot pass judgement on the contents of any document tabled in this House. It cannot determine the adequacy of a report tabled pursuant to an Act of Parliament any more than it can determine whether or not a government response to a report of a parliamentary committee is comprehensive. Such complaints can only be pursued through the political process. Nevertheless, as I think I have indicated earlier in this judgement, I recognize that it is very important that they should be pursued, and in this case the appropriate forum in which to do so is the Standing Committee on Aboriginal Affairs and Northern Development to which the report stands deferred.

I think I can add this, that rules have to have some meaning. While it is certainly true and procedurally correct, it is not the place for the Chair to interpret all the words in every rule that we have. It would be very helpful for the business of this place if all honourable Members try to put as reasonable an interpretation on those words as is possible.

I thank honourable Members for their interventions.

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1. *Debates*, June 26, 1987, pp. 7700-3.
2. *Debates*, June 29, 1987, pp. 7749-50.

## THE DAILY PROGRAM

### Routine Proceedings

Statements by Ministers: advance notice to the opposition parties

March 18, 1987

*Debates*, p. 4305

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**Context:** On March 18, 1987, the Hon. Herb Gray (Windsor West) rose on a point of order regarding the notice given by the Government about a statement the Minister of Employment and Immigration (Hon. Benoît Bouchard) was preparing to make during "Statements by Ministers." According to Mr. Gray, the Government had given the opposition parties only one hour's notice rather than the usual notice of at least two hours. He argued that this violated the informal understanding between the Government and the opposition in such matters. Other Members also addressed the issue.<sup>1</sup> The Chair ruled immediately. The decision is reproduced in full below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I must say it is impossible for the Chair to come down with a satisfactory ruling in a case like this. There is obviously a problem between the Government and the two opposition parties. It is also clear it has always been the custom and even tradition here in the House to give sufficient notice when a Minister intends to make a statement or a speech in the House. I am very unhappy about the situation, but I repeat, it is impossible for the Chair to come up with a satisfactory solution.

Honourable Members have been on both sides of the Chamber. I would urge all Government Ministers to give as much notice as possible in cases where the critics have an obligation to respond. This is a completely understandable tradition. It has not always been honoured, and in that regard, perhaps Members on both sides of the Chamber in this particular Parliament are not blameless. The Chair has been here for some years. I have certainly heard this complaint before and I have been in a position where I have made the complaint. I know the honourable Parliamentary Secretary (Mr. Doug Lewis) will urge members of the Cabinet to make an extra effort to give adequate notice.

For the benefit of members of the public who are watching, the reason for adequate notice is that the critics who must respond to a Minister's statement do require time to think through the implications of the statement and its subject matter, and also for the formulation of a response. A statement by a Minister may be very brief but, nonetheless, a statement is important or it would not be made in the House. I must say that I commend the Government for the fact that it is making a great many statements in the House. That is in the traditions of this place and it is a good thing. However, I would ask honourable Ministers to remember that the critics of the opposition parties have their jobs to do too, and in the public interest of Canada, and notice wherever possible ought to be given with as much

regard to the courtesies and traditions of this place as possible. Having said that, I hope honourable Members will accept that the matter is closed. Under the rules, I must hear the honourable Minister.

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1. *Debates*, March 18, 1987, pp. 4303-5.

## THE DAILY PROGRAM

### Routine Proceedings

Statements by Ministers: right of reply; recognizing a political party; Speaker's authority to interpret statutes

October 25, 1990

*Debates*, pp. 14668-9

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**Context:** *On October 25, 1990, the Hon. Barbara McDougall (Minister of Employment and Immigration) made a statement when "Statements by Ministers" was called. A spokesperson for each of the opposition parties then commented briefly on her statement. The Hon. Jean Lapierre (Shefford) rose on a point of order because he wished to comment on the Minister's remarks. Arguing that the independent Members who formed the Bloc québécois constituted a significant proportion of the Commons, Mr. Lapierre asked that the Bloc be given the opportunity to respond to major announcements by the Government. Other Members argued for their part that the right of reply to a Minister's statement by a group of Members depended on that group's being officially recognized as a party.*

*Mr. Lapierre then requested further clarification as to official recognition of a party. He asked the Chair to determine whether statutes take precedence over the Standing Orders and practices of the House in this regard. He concluded by requesting the consent of the House to comment on the Minister's statement.<sup>1</sup> The Chair ruled immediately. The decision is reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** I want to thank the honourable Member for Shefford for his comments, and the other Members—the honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier), the honourable Member for Kingston and the Islands (Mr. Peter Milliken), the honourable Member for Kamloops (Mr. Nelson Riis), the right honourable Secretary of State for External Affairs (Rt. Hon. Joe Clark) and the Parliamentary Secretary (Mr. Albert Cooper).

This is very interesting, because the honourable Member for Shefford is seeking an interpretation from the Chair respecting certain laws of Canada. A legal interpretation might be very interesting. I am tempted but, unfortunately for the honourable Member for Shefford, it is not the Chair's role to interpret the Statutes of Canada. Consequently, I must reject the honourable Member's request. I have taken a few moments of the time of the House to discuss a matter which, as I said before, is most interesting but it is an area that is closed to the Chair.

I would like to draw to the attention of honourable Members rule 33. It is very clear.

33.(1) On Statements by Ministers, as listed in Standing Order 30(3), a Minister of the Crown may make a short factual announcement or statement of government policy. A Member from each of the parties in opposition to the Government may comment briefly thereon. The time for such proceedings shall be limited as the Speaker deems fit.

We are bound by the rules here and, as honourable Members have said, that is the rule. I think the honourable Member for Kamloops said the Speaker's hands were tied. That is certainly the case and, without consent or without a change in this rule, I must say to the honourable Member for Shefford that I am not in a position to allow the honourable Member to respond.

I want to point out to honourable Members, as has been mentioned in argument, and also to the public that this does not mean that the honourable Member for Shefford or others who sit in this Chamber outside the recognized parties at the moment do not have a chance to be heard. That would be an interpretation which is not accurate.

All Members have the right to speak during the period called Statements by Members each day, a full sixty second statement. Further, Members have the right to ask questions in Question Period. After that question is asked, under the rules Members can go further. They can ask to be allowed to speak on the adjournment debate and, when their turn comes up, that is a seven-minute speech to which the Government responds for three minutes. There are other ways—and I have not precluded some other ways as well—in which these matters can be raised.

Unfortunately for the honourable Member for Shefford, I am bound by the rule. I see the honourable Member is indicating some understanding of that. His route, I think, is discussions with his colleagues and, if there is to be a change, then of course I would abide by it.

It has been brought to my attention that there was a request by the honourable Member for Shefford to respond. Is there unanimous consent to allow the honourable Member for Shefford to respond?

**An hon. member:** No.

**Mr. Speaker:** I have to advise the honourable Member there is not unanimous consent.

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1. *Debates*, October 25, 1990, pp. 14665-8.

## THE DAILY PROGRAM

### Routine Proceedings

Statements by Ministers: Government policy announced outside the House

October 4, 1989

*Debates*, p. 4309

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**Context:** *On October 4, 1989, Mr. Iain Angus (Thunder Bay—Atikokan) rose on a question of privilege with respect to an important announcement on rail transportation policy that a Minister had made outside the House. In the Member's opinion, such an announcement ought to have been made during "Statements by Ministers" and not at a press conference. He asked the Speaker whether this constituted a breach of Parliament's privileges. Other Members also addressed the issue.<sup>1</sup> The Speaker ruled immediately. His decision is reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** The Speaker, of course, is not supposed to have any personal memory of events in this place. But I do, and it has been customary from time to time over many years for complaints to be laid before the Speaker with respect to whether or not it was appropriate for the Government to make a statement in the House which, of course, if that is done under the rules enables both opposition critics to have equal time to respond.

It has been argued by Members that sit on both sides of this House on different occasions that that is the more appropriate way to proceed. I must advise honourable Members and the public who are listening that that is not a practice which is stipulated in any rules of this House. Of course, as the Chair always says, if the House wishes to change the rules then the Chair will certainly abide by them. There are no rules to that effect, as I say, and the honourable Member for Thunder Bay—Atikokan, in raising this point, raises a complaint.

The Government has made a response which may or may not satisfy honourable Members but it is not a point of privilege and it is not a contempt of the House. I would suggest that honourable Members discuss with each other ways and means by which the practice of making statements in the House can be followed as often as possible.

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1. *Debates*, October 4, 1989, pp. 4307-9.

## THE DAILY PROGRAM

### Routine Proceedings

Presenting reports from committees: right of opposition parties to comment on report

March 19, 1987

*Debates*, p. 4327

**Context:** On March 19, 1987, the Chairman of the Standing Committee on Labour, Employment and Immigration (Mr. Jim Hawkes) tabled a report in the House and proceeded to comment on its salient points. Following his remarks, the Hon. Warren Allmand (Notre-Dame-de-Grâce—Lachine East) rose on a point of order to indicate that the usual practice was simply to table the report. Since Mr. Hawkes had made a statement of considerable length, Mr. Allmand felt that in the circumstances the opposition critics should also be allowed to voice their views about the report. Other Members addressed the issue.<sup>1</sup> The Speaker ruled immediately. His decision is reproduced in full below.

### DECISION OF THE CHAIR

**Mr. Speaker:** Perhaps the Chair could assist honourable Members. What has happened here is that pursuant to the Standing Orders, the honourable Member for Calgary West, as Chairman of the Committee, has reported to the House on a report from that Committee concerning the whole question of unemployment insurance, and it is clearly a very important matter. The honourable Member for Calgary West has also commented on the fact which is, I think, a credit to the Committee, if the Chair can say so, that there was great unanimity and that Members of all parties collaborated and worked very hard on the committee report. The report has already received some attention in the news and it is perhaps not too hard to understand why the Chairman of the Committee wished to say a few more words than a Committee Chairman would ordinarily do when bringing in a report of such nature to the House.

What has happened is that other honourable Members have risen and said that when there is a statement like that, perhaps it would be appropriate if representations from the Official Opposition and the New Democratic Party were also permitted. I take it literally that the Chair is being asked if the Chair could accede to that request at this time. I draw to the attention of honourable Members Rule 99(1) which states:

Reports to the House from committees may be made by Members standing in their places, at the time provided pursuant to Standing Order 19(3) or 82(15)(c), provided that the Member may be permitted to give a succinct explanation of the subject-matter of the report.

This House can do anything by consent, of course. If it were the disposition of the House at any given time, on any particular report, to hear as well from representatives of the other parties, and if the House agreed, then that of course would be completely appropriate. However, the Chair is in the position, in this case, of having to look to the rule. On some other occasion, and even on this occasion, the Chair does not, under any circumstances, wish to close off legitimate comment or what might even become debate, if it were the wish of the House to do so. However, I think that under the circumstances, the Chair must adhere to the rule and say to honourable Members and to the honourable Member for Notre-Dame-de-Grâce—Lachine East, the honourable Member for Nickel Belt (Mr. John Rodriguez) and the honourable Member for Montreal—Sainte-Marie (Mr. Jean-Claude Malépart), that looking at the rule, the Chair cannot unilaterally take away from that rule and give the permission requested. In saying this, the Chair is in no way diminishing the importance of the matter. As the Chair indicated a few moments ago, and I think I am quite permitted to say it again, the House, and the country as well, owes a great deal to the work of all parties in the preparation of this report.

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1. *Debates*, March 19, 1987, pp. 4325-7.

## THE DAILY PROGRAM

### Routine Proceedings

### Introduction of Bills

Government Bill: explanation of purpose at time of introduction; practice of providing explanatory material to opposition critics

December 1, 1987

*Debates*, p. 11344

**Context:** On December 1, 1987, the Hon. David Crombie (Secretary of State of Canada) sought leave to introduce Bill C-93, respecting the preservation and enhancement of multiculturalism in Canada. The House having given leave for the Bill to be introduced, the Minister then proceeded to give a short explanation of the purpose of the Bill. Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order to indicate that he thought the Secretary of State had risen to make a statement. He claimed it was not usual for Ministers to make statements of that nature when introducing bills, and then inquired whether it was going to be a new practice that when Ministers introduce bills they explain what is in the bill. The Minister and Mr. Sergio Marchi (York West) both addressed the issue raised. Mr. Marchi indicated that he had no problem with the Minister's comments on the Bill, but would have appreciated if the critics for the proposed piece of legislation had been given the traditional one or one and one-half hour notice. After hearing further remarks from the Minister,<sup>1</sup> the Speaker ruled, addressing both issues.

## DECISION OF THE CHAIR

**Mr. Speaker:** It seems to the Chair that the Bill which was introduced has, at least in principle, support on both sides of the Chamber. Unless any honourable Member feels a terribly burning urge to make further comment, perhaps the Chair could settle this matter by reminding honourable Members of Standing Order 107(2) which states:

A motion for leave to introduce a bill shall be decided without debate or amendment, provided that any Member moving for such leave may be permitted to give a succinct explanation of the provisions of the said bill.

The honourable Minister said that he had an indication that he had some 60 seconds. I want to assure the honourable Member for Ottawa—Vanier that the message I sent to the Minister was that he had 30 seconds.

However, it is important to note that it is the case that any Member introducing a bill can speak succinctly, as the rule states, and I shall be very firm in making sure that it is succinct.

I believe the honourable Member for York West is only expressing what Members on both sides of the House, depending on where they sat at different times, have always wished to be the practice. I think the honourable Minister has given some explanation for that.

Again, as always, I would urge Ministers to do everything possible to be sure that information is given as soon as possible, especially to the opposition critics. I think it was made quite clear by the Minister that he understands that tradition and does in fact honour it.

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1. *Debates*, December 1, 1987, pp. 11343-4.

## THE DAILY PROGRAM

### Routine Proceedings

Motions: elimination of requirement that list of names under “Motions” on the *Order Paper* be read each sitting day

September 29, 1987

*Debates*, p. 9419

**Context:** On June 25, 1987, Mr. Les Benjamin (Regina West) rose on a point of order to make a suggestion about the calling of the individual names listed under the item “Motions” during Routine Proceedings. He asked whether the Speaker could stop reading the entire list on the *Order Paper* and instead simply ask the House whether all the motions on the day’s *Order Paper* should “stand”. Mr. Doug Lewis (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) supported the Member’s proposal and suggested the Speaker consider it over the summer. The Speaker took the matter under consideration<sup>1</sup> and on September 29, 1987, made a statement on this matter.

### DECISION OF THE CHAIR

**Mr. Speaker:** Honourable Members will recall that several months ago, there was some discussion about altering the form of Routine Proceedings by eliminating the necessity under Motions and Bills of reading an endless list of honourable Members’ names, only to say after each name that the matter would stand. It seemed to be the disposition of the House that we try to eliminate that. As a consequence, the Chair has given consideration to the matter and I will read a statement which will perhaps meet the suggestions of honourable Members. We could try this at least until the turn of the year.

On June 25, 1987, the honourable Member for Regina West raised a point of order regarding the amount of time spent reading aloud individual items during Routine Proceedings. Specifically, he mentioned the large number of Members whose Notices of Motions are listed on the *Order Paper*. The same comment would apply to the introduction and first reading of bills.

The honourable Member suggested that the Chair not read a lengthy list but rather say something to the effect of: “Shall all the motions shown on today’s *Order Paper* stand?” The honourable Parliamentary Secretary to the Government House Leader supported the suggestion and the Chair undertook to examine the possibility of streamlining the proceedings.

After examination of past practice and the Business of the House as listed on the *Order Paper* and after consultation with the three Parties, I am prepared to offer the following proposal which will be reviewed after the Christmas recess.

The Chair will announce each heading under Daily Routine of Business. Members wishing to be recognized will, as is customary, rise in their places. After reading the heading Introduction of Government Bills, Introduction of Private Members' Bills and Motions, the Chair will no longer call each Minister or Member whose item of business is listed on the *Order Paper* under those headings. Rather, the Speaker will simply announce those types of business and be prepared to recognize those Members if they rise. This should provide sufficient opportunity for Members to bring their business forward.

In order to ensure the effectiveness of this procedure, I should like to suggest to the honourable Members that it is always useful to notify in advance one of the Table Clerks of the time they intend to move their motions or introduce their bills during Routine Proceedings.

I wish to thank all honourable Members for their helpful suggestions and I hope that this proposal reflects the over-all attitude of the House in its eagerness to operate more effectively.

*Postscript: This procedure became the regular practice of the House.*

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1. *Debates*, June 25, 1987, p. 7585.

## THE DAILY PROGRAM

### Routine Proceedings

Motions: motions of instruction relating to bills; motion authorizing a committee to travel; correct placement on the *Order Paper*; motions under Private Members' Business; permissive and mandatory instructions

July 13, 1988

*Debates*, pp. 17504-9

**Context:** On July 11, 1988, during Routine Proceedings, Mr. Steven Langdon (Essex—Windsor) moved a motion standing in his name concerning the Legislative Committee on Bill C-130, respecting the Canada-U.S. Free Trade Agreement. The motion had been listed on the *Order Paper* under "Motions." Its purpose was to authorize the Committee to travel to hear witnesses. The Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)) rose on a point of order, arguing that the motion was out of order for two very specific reasons. First, since it was being moved by a private Member, it should rather have appeared on the *Order Paper* under "Private Members' Business." Leaving it under "Motions" he claimed, would distort parliamentary procedure as it applied to Private Members' Business. Second, since committees had the authority to make their own decisions, it would be reasonable to let the Committee organize its business as it saw fit. In this case, the Minister noted, the Committee had already decided not to travel.

Other Members also addressed the issue, in particular the question of whether the proposed motion was permissive or mandatory, i.e. did it authorize the Committee to travel or order it to do so? Another issue raised was the remote possibility that if the motion were placed under "Private Members' Business" it might never be debated. The Speaker took the matter under consideration.<sup>1</sup>

On July 13, 1988, he handed down his decision, which is reproduced in full below. Requests by Members for clarification and the Speaker's answers follow.

### DECISION OF THE CHAIR

**Mr. Speaker:** Honourable Members will know that I heard an important argument two days ago with respect to the use of motions of instruction relating to bills. I undertook to honourable Members to do everything I could to return as quickly as possible with a ruling. The ruling is now complete.

The Chair has considered the procedural arguments raised on the admissibility of the motion of instruction moved by the honourable Member for Essex—Windsor. Since the motion concerns the Legislative Committee on Bill C-130, which is, of course, the Committee studying the Canada—U.S. [Free] Trade Agreement and whose deliberations have already begun, I wanted to proceed expeditiously in rendering this decision. I just want to say to honourable Members and to the public that this is a technical ruling, but it is of importance and I ask all honourable Members to bear with me.

In his point of order, the honourable Minister of State argued that this type of motion should not be moved under the rubric “Motions”—which is one of the items we go through each day under Routine Proceedings—but should rather be taken up as an item of Private Members’ Business. In reply, the honourable Member for Kamloops—Shuswap (Mr. Nelson Riis) and the honourable Member for Windsor West (Hon. Herb Gray) presented arguments for allowing it to be moved under the heading of “Motions”. After listening to the points made by all Parties, I wish to proceed as follows.

As most honourable Members know, after second reading, a bill is normally sent to a legislative committee for detailed consideration, as it was in this case. It is this stage when the bill has been referred to committee that motions of instructions are to be moved. A motion of instruction is nothing more than a motion passed by this House sending a message to a committee that is already in place empowering it to do something and, in some cases, if one wants to go back through the history, perhaps to instruct it. I say for the record that this motion moved by the honourable Member for Essex—Windsor was a motion to empower the Committee to travel both in Canada and abroad, if the Committee so decided to do.

It is at this stage, when the bill has been referred to committee, that motions of instruction are to be moved. The purpose of such an instruction is to empower a committee to do something which it could not otherwise do. In this case, the committee studying the trade agreement does not have on its own, nor does any other committee, the automatic right to travel. It would have to seek that right or else the House could, on the motion of the honourable Member, or on the motion of the Government, or on the motion of any other honourable Member for that matter, empower the committee to decide whether it wanted to travel or not—but at least empower it to do so.

What the honourable Member for Essex—Windsor has done is he has tried to move under “Motions” during Routine Proceedings to have this House consider sending to the Committee an instruction empowering it to travel if it so wishes. I think I see the honourable Member for Essex—Windsor nodding. I think I have put the situation as clearly as I can.

Practically all existing Canadian precedents dealing with motions of instruction relating to bills took place in a period when the practices and procedures of the House were quite different from those used today. During this period bills were referred to Committee of the Whole, that is to say a committee of the whole House. The Speaker goes out of the Chair and the Deputy Speaker takes the Table. The entire House sits here in this Chamber as if it were in committee. That is what Committee of the Whole means.

As I said, during this period bills were referred to Committee of the Whole following second reading after the adoption of a motion: “That the Speaker do now leave the Chair”. This procedure is no longer applicable. Consequently, our rules on motions of instruction to committees studying bills need to be reviewed in a new context.

Citation 759(1) of *Beauchesne* Fifth Edition reads in part:

The time for moving an Instruction is immediately after the committal of the bill, or, subsequently, as an independent motion. The Instruction should not be given while the bill is still in the possession of the House, but rather after it has come into the possession of the committee.

While the above citation is accurate, it leaves a considerable number of questions unanswered. An examination of precedents and citations in *Beauchesne* Third Edition and *Bourinot* Fourth Edition reveals that under previous practice a motion of instruction could be moved after second reading under one of three different conditions. The first is immediately after second reading, without notice or debate, but prior to the Speaker leaving the chair. The second is as an amendment to the motion “That the Speaker do now leave the Chair”. The third is at some point following second reading as an independent motion, after notice.

In the first situation the Speaker accepted the motion without notice immediately after second reading because it was a privileged motion intrinsic to the progress of the bill to committee stage. If this approach is taken, and logically it can only be taken in instances where a referral has been made to Committee of the Whole, the motion is not debatable or amendable according to Standing Order 56(2). This is in keeping with precedents found on March 19, 1948, at page 269 of *Journals*, and on July 30, 1956, at page 942 of *Journals*.

In the present case, the opportunity to move a motion of instruction at that particular time has not been available since Bill C-130 has been referred to a Legislative Committee.

The second approach, that of moving a motion of instruction as an amendment to the motion that the Speaker do now leave the Chair, no longer applies because Standing Order 78 now provides for the Speaker to leave the Chair without question put.

The third option, that of proposing an independent motion with notice, is in keeping with the authorities cited, and at least one known precedent which occurred on March 26, 1888, found at page 136 of *Journals*.

The honourable Minister of State argued that this particular motion should be moved more properly under Private Members’ Business. The dilemma that the Chair faces is that the precedents to which I have just referred date back to a

period when the *Notice Paper* was much different from the one used today. In addition, new procedures have been introduced and this complicates the situation still further.

If Members wish to pursue this avenue and move a motion of instruction under Private Members' Business, this option is of course open to them.

The Chair would certainly have no objection to this approach. However, the Chair, and I suspect most honourable Members, might share the practical concerns about this approach raised by the honourable Members for Kamloops—Shuswap and Windsor West namely, that the likelihood of such a motion [being] debated, let alone voted upon, is now quite remote, because of the new rules governing Private Members' Business.

The Chair, however, fails to see why the honourable Member for Essex—Windsor could not propose his motion under the rubric "Motions". The honourable Member for Windsor West cited Standing Order 56(1)(p). This Standing Order lists as debatable items usually raised under Routine Proceedings "motions ... [concerning] the management of [House] business [and] the arrangement of its proceedings."

The rubric "Motions" usually encompasses matters related to the management of the business of the House and its committees, but it is not the exclusive purview of the Government, despite the Government's unquestioned prerogative to determine the agenda of business before the House. For example, an individual Member's motion for concurrence in a committee report is properly moved under this rubric. Similarly, the Chair judges that, if a Member wishes to give notice of a motion of instruction to a committee on a bill, it can be filed under "Motions" on the *Notice Paper*. Once called, the motion is debatable and amendable pursuant to Standing Order 56(1) and, if the motion has not come to a vote by the end of the day, as in the analogous case of concurrence in a report, the motion is transferred to Government Orders where debate will resume only at the pleasure of the Government.

Before our rules pertaining to the referral of bills to Committee of the Whole were changed, any Member could move a motion of instruction to a committee on a bill. Were the Chair to rule today that this can now only be done under Private Members' Business, then this would in fact mean that only the Government, under Government Notices of Motion, could move instructions to committees studying legislation in a timely and effective manner.

Another important point in the discussion, and one on which the Chair sought clarification from honourable Members, was whether the proposed motion of instruction is permissive or mandatory.

Generally speaking, a permissive instruction confers on a committee the authority to do something it otherwise would have no power to do. Citation 761 of *Beauchesne* Fifth Edition lists some examples, among them, the permission to travel, to consolidate bills or to divide a bill.

According to Citation 757 of *Beauchesne* Fifth Edition, if such a motion is adopted, it is then left to the committee to decide whether or not it will exercise this power. As Citation 409 of *Beauchesne* Third Edition explains:

An instruction which is generally made when a Bill is committed, is not mandatory, and it is therefore customary to state explicitly in the motion that the Committee “have power” to make the provision [required]. The intention is to give a Committee power to do a certain thing if they think proper, not to command them to do it. The committee is not bound to obey the instruction.

Precedents relating to bills have been examined and all of these respected this permissive approach.

In the case before us, the Chair has closely examined the text of the motion proposed by the honourable Member for Essex—Windsor and has concluded that it rests squarely within the definition of a permissive instruction.

Finally, at the risk of venturing into highly technical matters, the Chair would like to point out to honourable Members, although no reference was made to it when the matter was argued, the last sentence of Citation 759(1) of *Beauchesne* Fifth Edition states: “If the bill has been partly considered in committee, it is not competent to propose an Instruction”.

The Chair wishes to avoid possible confusion on this point and I would ask the House to bear with me as I briefly explain its intent to honourable Members. In early House practice, as I discussed earlier, there were specific procedures for moving motions of instruction to a Committee of the Whole considering a bill.

Citation 412 of *Beauchesne* Third Edition states:

All instructions must be moved on the first occasion when the order for the Committee [of the Whole] on a Bill has been read. If the Bill has been partly considered in Committee at a previous sitting, it is not competent to propose an instruction when the order is read for the House “again in Committee,” as the rules require that the Speaker leave the Chair (without putting the question) as soon as that order has been taken up.

The same explanation occurs on page 517 of *Bourinot* Fourth Edition. Simply put, the passage means only that when the House entered Committee of the Whole for a second or subsequent time, it did so automatically without a motion for the Speaker to leave the Chair. A motion of instruction without notice could not be put at that time because this was not immediately after second reading. Further, an amendment to the question “That the Speaker do now leave the Chair” could not be put because the Speaker automatically left the Chair

without the question being put. The only viable option would be for a Member to propose an independent motion of instruction with notice to be taken up under “Motions”. Although this is not expressly stated in Citation 412 of *Beauchesne* Third Edition, it is in keeping with Citations 409 to 411 of the same volume.

However, the idea that a motion of instruction could be moved with notice after a committee commenced its deliberations is not addressed in *Beauchesne* Fifth Edition where, instead, the early practice appears to have been transmogrified into a categorical injunction against committees being given an instruction after they began their deliberations on a bill. If Members think that this is difficult to follow, wait until the end.

The Chair raises this issue only as a cautionary measure to clarify the concept before the House.

In summary, the Chair, after carefully examining and analysing the relevant precedents and authorities, rules that the motion proposed by the honourable Member for Essex—Windsor is in order and may be moved under the rubric “Motions” and that until the House chooses to clarify its rules relating to instructions, the Chair will continue to accept such motions, after due notice, on condition that they are directed only at committees reviewing legislation. I hope that that is clearly understood. That does not go to standing committees.

The Chair again wishes to thank all honourable Members for their valuable contributions to this discussion, and I thank all honourable Members for patiently hearing me through a complex procedural matter which is made more complex because there have been changes throughout the history of our rules which make it somewhat difficult to completely understand what some of the citations mean. I have tried to meet that problem. I am sorry that I could not come into the House earlier, but with the help of the Table Officers I have brought this ruling back as soon as I could.

*And Mr. Riis having sought two points of clarification, specifically whether the Speaker’s ruling applied to a standing committee charged with studying a bill and whether it applied to both permissive and mandatory instructions:*

**Mr. Speaker:** I can assist the honourable Member. First, as honourable Members know, under the new procedure most bills now go to a legislative committee. This is in fact the situation that we have in front of us. However, there are a number of standing committees that cover various aspects of government activity, sometimes a single Department, and sometimes several Departments. Those standing committees are empowered now to do many things on their own.

As the honourable Member for Kamloops—Shuswap has pointed out, it is absolutely correct that sometimes rather than send a bill to a legislative committee after second reading, in some instances it has been the practice to send the bill to the standing committee. Before we changed the rules all bills went to standing committees, unless a special committee was struck.

As is being used in this present instance, a motion cannot be used to send instructions to a standing committee unless that standing committee has received a bill after second reading, and in that case it would be acting in the capacity of a legislative committee. I can assure the honourable Member for Kamloops—Shuswap that if a bill was sent to a standing committee after second reading to be dealt with in the same way as it would be dealt with before a legislative committee, then what I have ruled in order today would be applicable. I hope that that is helpful.

The second question is on the distinction between mandatory motions and permissive motions. Without going into a lot of detail, if one goes back into history, the reality is that those motions have been for a long time permissive not mandatory. Until I receive some instruction from the House or until I can be persuaded that it would be appropriate to allow the effect of this ruling to include a mandatory motion, this ruling says that these motions must be permissive. That is in keeping with many years of practice. At least at the moment I can find no tradition or practice which contradicts that.

What I have ordered is that a motion as put by the honourable Member for Essex—Windsor can be moved after notice on “Motions” by any Member of the House, that that motion must be permissive in nature, and that it must of course go to a legislative committee that is studying the bill in question after second reading. It could also go to a standing committee if that standing committee had received a bill after second reading and is acting as a legislative committee.

I hope this has been helpful to the honourable Member.

*And Messrs. Riis and Gray having commented further on the ruling, especially concerning the distinction between permissive and mandatory instructions:*

**Mr. Speaker:** I have the point of both the honourable Member for Kamloops—Shuswap and the honourable Member for Windsor West. Certainly, at the moment, my ruling applies to the motion of the honourable Member for Essex—Windsor. Since omniscience is seldom given to any of us here on earth and certainly not to Speakers, it might be that at some other occasion I might be persuaded by the procedural knowledge of honourable Members, who I know would want to assist me, that another view might be taken of a mandatory motion. Naturally, what I am saying here today would not preclude an honourable Member from rising and arguing that at some other point, at some other time.

At the moment, at least, it is my view that that argument would not prevail. It does not mean for one minute that I would not hear it. I am indicating pretty clearly, I think, at least at the moment, that until I can be persuaded otherwise—despite the citation in *Beauchesne* that the honourable Member for Kamloops—Shuswap has quoted—if that is put into context and into history, at least I feel

today that the appropriate inference to be drawn is that the proper practice is permissive motions only. If honourable Members wanted to raise that matter at another time, I would most certainly hear them.

If I could be persuaded that I have misinterpreted the tangled history of this particular matter, then of course I would act accordingly. The honourable Minister of State.

*And Messrs. Lewis and Lloyd Axworthy (Winnipeg—Fort Garry) having commented further:*

**Mr. Speaker:** The honourable Member for Winnipeg—Fort Garry is very persuasive. However, I think it is important that this ruling be taken in the context in which it has been argued and given. It is not for the Chair to go beyond what is clearly the practice and the precedents. That is, it is quite clear in our practice that whatever effect a permissive motion given to a committee may have on the committee, it is for the committee to decide what it is to do with it.

As the honourable Member will have noticed in listening to my reasons as I read them, I have made it very clear that the committee does not have to necessarily act. What went on in that committee is not for the Chair to speculate upon. I am trying as much as possible to meet the appropriate concerns of the honourable Member for Essex—Windsor and other honourable Members who have raised this matter, to ensure that all honourable Members, as can the Government, can move a permissive motion.

If the motion was, for example, passed on some occasion by the House and sent to the committee, what effect that might have on the committee is not for the Speaker to say. It certainly is open to the honourable Member for Winnipeg—Fort Garry to perhaps approach individual members of the committee—as is of course the right of any Member—and say: “Look, in view of this, don’t you think you should do something?” That is not something upon which the Chair can speculate. I know that the honourable Member would understand that.

What moral weight may be given to a permissive motion is something for the committee itself, and other honourable Members who may be in conversation with committee members, to measure. It is not for the Chair to say.

*And Mr. Riis having again raised the matter of a permissive vs. a mandatory instruction:*

**Mr. Speaker:** I want to assure the honourable Member for Kamloops—Shuswap that I do not think it would ever be appropriate for a Speaker to say that he or she would not hear argument on a procedural matter. After all, because we have had arguments on procedural matters over centuries, that is why we have the body of procedural law that we do have.

I have to say to the honourable Member also that I would have to deal with it when a case arose. I am also indicating to honourable Members that at least for today I am of the view that the practice, the tradition and the history indicates that these matters are permissive. If I can be persuaded to the contrary, of course I would change my position. But that is for another day, not today.

In the meantime, I hope this has been helpful because as the honourable Minister of State has said—and I am appreciative to the honourable Minister for his generous reaction because I think it is important, we all think it is important—that private Members not be placed in a position where they are more limited in their ability to take part in the dealings of this House than they might otherwise be. What has happened as a consequence of this argument I think has clarified the matter.

The second question is still there, and I understand perfectly well why some honourable Members may want to pursue it further at another time, and if they do, then of course I will hear them.

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1. *Debates*, July 11, 1988, pp. 17353-9.

## THE DAILY PROGRAM

### Routine proceedings

Motions: motions relating to the appointment of a Privacy Commissioner and an Information Commissioner; correct placement on the *Order Paper*; Government Business; officers of the House and of Parliament

June 6, 1990

*Debates*, pp. 12339-40

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**Context:** On June 4, 1990, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order regarding the notices of motions to appoint a Privacy Commissioner and an Information Commissioner. The motions were printed on the *Order Paper* under the heading “Motions”. In Mr. Gauthier’s opinion, the motions were erroneously listed. He felt that proceeding in this manner was highly unusual and possibly irregular, since by placing the motions under “Routine Proceedings” the Government was treating the officials in question as officers of the House, when they were more properly officers of Parliament. He argued that as officers of Parliament, motions on their appointment should not come under “Routine Proceedings” but rather under “Government Notices of Motions”. The Hon. Harvie Andre (Minister of State and Government House Leader) rose to point out that the legislation covering the two appointments required the passage of a resolution by the House. He therefore considered it more logical to treat the motions as the business of the House than as Government business, since they involved officers of the House and of Parliament. Mr. Peter Milliken (Kingston and the Islands) argued that the motions should appear under “Government Business” because “Routine Proceedings” is reserved for motions involving the business of the House and the discussion of committee reports. The Deputy Speaker took the matter under consideration.<sup>1</sup> On June 6, 1990, the Speaker handed down a decision, which is reproduced in full below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Monday of this week the Opposition House Leader, the honourable Member for Ottawa—Vanier, rose on a point of order concerning two items which the Government placed on the *Order Paper*.

One was for the appointment of an Information Commissioner and the other was for the appointment of a Privacy Commissioner. The Opposition House Leader contends that the Government erred in requesting that these items be placed under the rubric “Motions” in the *Order Paper*. He believes that they should have been placed under the rubric “Government Notices of Motions”.

Several Members, including the Government House Leader, contributed to the discussion of this interesting point of order. The Chair thanks all honourable Members for their contributions. I am now prepared to address the concerns raised and render a decision.

To many persons in our listening audience, it may appear irrelevant as to where a notice of motion is placed on our *Order Paper and Notice Paper*. It is important to note, however, that these categories have been developed over a lengthy period of time in order to respect the organization of the business of the House. Some categories are uniquely reserved for the Government or the opposition, whereas others are reserved for private Members and some very special categories are reserved for items which affect the transaction of the routine business of the House.

To illustrate matters, motions to amend or suspend the Standing Orders, to appoint special committees, to concur in committee reports, to instruct a committee to divide or consolidate bills are moved under the heading "Motions" and are often adopted by unanimous consent.

By contrast, motions to deal with matters of substance or Government policy are moved under the heading "Government Motions". For example, motions to advance Government bills or to adopt resolutions are handled under this heading and are usually adopted on division after extensive debate.

At this point I wish to refer to a decision I delivered on June 13, 1988 relating to a similar procedural problem. At page 16377 of *Hansard* I explained:

... a "Government Notice of Motion" is any motion that the Government gives notice of. In other words, a "Government Notice of Motion" is not based on the content of the motion, but rather upon the mover. In many cases, therefore, a notice of motion could go under more than one heading and it is up to the Minister giving notice to decide which heading should be chosen. Clearly a "Government Notice of Motion" can only be moved by the Government, but the Government can choose to place it either under "Motions" or under "Government Notices of Motion".

This concept is borne out in a ruling on May 16, 1985, by Speaker Bosley. He was called upon to rule on whether a time allocation motion had to be moved under "Motions" during Routine Proceedings or whether it could be placed under "Government Notices of Motion" and then transferred to "Government Orders".

His decision was that it could be proceeded with in either way and that the choice was up to the Minister moving it.

A key element in the Government House Leader's argument concerned a definition of what items are permitted to be placed under the rubric "Motions". While no specific Standing Order enunciates exactly what should or should not be included under this rubric, Standing Order 67(1)(p) gives us a partial list. It reads, in part:

... [motions] as may be required for the observance of the proprieties of the House, the maintenance of its authority, the appointment or conduct of its officers, the management of its business, the arrangement of its proceedings,

the correctness of its records, the fixing of its sitting days or the times of its meeting or adjournment.

From this the Opposition House Leader and honourable Member for Kingston and the Islands suggest that it is inappropriate to file a motion for the appointment of the Information Commissioner or for the Privacy Commissioner under the rubric "Motions" because these appointments are for officers of Parliament rather than for officers of the House. This rubric, the Opposition House Leader contends, should only be reserved for officers of the House.

A review of precedents reveals that previous appointments to these positions were moved under the rubric "Government Motions". However, the question still remains: because that route was followed in the past, can we logically conclude that this route is the only option open? The Chair is not persuaded to that conclusion. Instead, as in the decision of June 13, 1988, the Chair concludes that the Government has the option of choosing to move such a motion under either heading.

Several honourable Members have pointed out that the Standing Order refers to the appointment or conduct of the House's officers. I have been unable to find anywhere a precise definition of who fits into that classification.

Taken in its widest sense, an officer of the House could include such positions as diverse as the Chair Occupants, the House Leaders, the Clerk and the Sergeant-at-Arms and the other officers reporting to the House through its Speaker. Some of these are appointed by resolution of the House, but many of them are not. Unless the House directs me otherwise it is this broad interpretation that I intend to be guided by.

As to the distinction that the honourable Member for Kingston and the Islands attempted to make between an officer of the House and an officer of Parliament, I have not been able to accept his reasoning on that issue, although I must say it is an interesting if not ingenious argument.

It is my view that the Auditor General for example could be considered to be either an officer of the House or an officer of Parliament.

In conclusion, the Chair judges that the Government has liberty to move the appointment of the Information Commissioner or the Privacy Commissioner either under the rubric "Motions" or under the rubric "Government Motions". The motions as they now stand on the *Order Paper* under the rubric "Motions" are regular and can be proceeded with.

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1. *Debates*, June 4, 1990, pp. 12212-5.

## THE DAILY PROGRAM

### Routine Proceedings

Presenting Petitions: attempt to present one or more additional petitions during the same sitting

November 7, 1986

*Debates*, pp. 1190-1

**Context:** On November 7, 1986, when the item “Presenting Petitions” was called, a number of Members presented petitions including Mr. Svend Robinson (Burnaby). After Mr. Lorne Nystrom (Yorkton—Melville) had presented a petition, he then moved “That the House do now proceed to Orders of the Day.” The question was put on the motion which was subsequently negatived by a recorded division. Mr. Robinson rose immediately on a point of order to clarify that the House was still under the item “Presenting Petitions” and to indicate he wished to present other petitions. It being one o’clock p.m., the Speaker adjourned the House until two o’clock p.m., pursuant to Standing Order 9, thus taking the point of order under advisement.<sup>1</sup> When the House resumed at two o’clock p.m., he delivered his ruling which is reproduced in extenso below.

### DECISION OF THE CHAIR

**Mr. Speaker:** ... I want the facts to be clearly understood. For the clarification of all Members and those who are watching these proceedings, the honourable Member is asking to present one or more additional petitions after having already presented petitions.

The process in the House has been that under the presentation of petitions during Routine Proceedings a Member who rises and is recognized by the Chair can present one, several or many petitions at that time. The petitions do not have to be all on the same subject, nor do they have to all come from the same part of the country. The practice has also been that, once having presented petitions, that particular Member cannot take his seat and rise again later to present another petition.

I draw to the attention of all honourable Members the ruling of former Speaker Sauvé on October 28, 1983. Speaker Sauvé then said:

I warn honourable Members that if they have several petitions they should file them all when they are recognized, because I will not recognize Members twice on petitions.<sup>2</sup>

On June 11, 1985, former Speaker Bosley said:

There is no rule that says that the honourable Member cannot present more than one petition. There is a practice that says a Member may seek the floor once to present petitions at which time the Member may try to present more than one petition. ... that has been the practice for some years...<sup>3</sup>

Lest any honourable Member or the public who follows these proceedings think that the petition or petitions which the honourable Member for Burnaby has in his hand is, as a consequence of this practice, being prevented from being presented to the Chamber and, through the Chamber, to the Government of the day, I remind honourable Members that there is another procedure for bringing that petition to the Table, that is simply to call for a Page and have the Page deliver the petition to the Table here in the Chamber. At that time that petition will be noted just as are other petitions presented when Members rise. That petition, along with the other petitions, will be transferred on that day to the appropriate office of the Government of the day, which Government must reply to petitions within 45 days.

Clearly, this practice does not preclude citizens of the country from having their petitions brought before the Government. Members who, perhaps due to the press of duties or forgetfulness, do not present all the petitions they have while on their feet, can always return on the next sitting day of this House and apply to present the petitions and say some words in support of them.

Therefore, the honourable Member's petition can, of course, be tabled. The citizens of the country who have signed that petition will have it properly dealt with. There are, therefore, two consistent precedents by which the Chair is bound. I have to rule against the honourable Member for Burnaby....

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1. *Debates*, November 7, 1986, pp. 1188-90.
2. *Debates*, October 28, 1983, p. 28457.
3. *Debates*, June 11, 1985, p. 5649.

## THE DAILY PROGRAM

### Routine Proceedings

Presenting Petitions: discrepancy between wording of petition and Members' statements upon presentation of petition

December 11, 1986

*Debates*, p. 1997

**Context:** On November 6, 1986, the Hon. Allan McKinnon (Victoria) rose on a question of privilege alleging that Mr. Howard McCurdy (Windsor—Walkerville) had unintentionally misled the House earlier that day. The Member argued that he had reason to believe that Mr. McCurdy failed to faithfully represent the views of petitioners given that the wording of the petition presented differed considerably from the wording the Member had used when presenting the said petition. Moreover, the Speaker had advised Mr. McCurdy to confine his remarks to the subject-matter of the petition.<sup>1</sup> Mr. Doug Lewis (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) alleged that other Members had also misrepresented "what petitioners say in writing." Other intervenors also spoke to the issue. After hearing arguments and indicating that this was a point of order, not a question of privilege, the Speaker took the matter under advisement.<sup>2</sup> On December 11, 1986, the Speaker made his ruling, which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** This is my ruling as a consequence of an intervention by the honourable Member for Victoria on November 6, 1986, who rose on a point of order to object to the remarks of the honourable Member for Windsor—Walkerville on presenting a petition. The honourable Member for Victoria alleged that the honourable Member for Windsor—Walkerville had gone far beyond the content of the petition, thereby misleading the House and misrepresenting the petitioners. The honourable Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council made the same allegations about the petitions presented by the honourable Member for Spadina (Mr. Dan Heap), the honourable Member for Winnipeg North Centre (Mr. Cyril Keeper), as well as the honourable Member for Comox—Powell River (Mr. Ray Skelly).

The Chair heard arguments from several Members on both sides of the House, including the honourable Members for Windsor—Walkerville and Winnipeg North Centre, who counterargued that their remarks were merely an attempt to paraphrase the contents of the petitions.

First, let me remind the House that since February 24, 1986, the rules regarding the presentation of petitions have changed considerably. The major change is that Members are now required to obtain certification from the Clerk of Petitions that their petitions meet the requirements of our Standing Orders and of our practices.

On presenting their petitions Members are permitted to give a brief summary of the content of the petition and, when Members have not been brief, my predecessors and myself have not hesitated to call Members to order and insist that they shorten their remarks. Members have been consistently reminded to keep their remarks short and pertinent. I refer honourable Members to such interventions by Speaker Francis on January 24, 1984, as reported at page 702 of *Hansard*, and by Speaker Bosley on November 5, 1985, as reported at page 8376 of *Hansard*. I will spare the House all such references for they are too numerous to list here. There has been some indication that there has been, and perhaps continues to be, a problem.

May I also remind the House that, as reported in *Hansard* at page 1131 on November 6, [1986] the Chair intervened while the honourable Member for Windsor—Walkerville was presenting his petition, particularly when he used the words “American blackmail”. In my opinion he was going beyond the thrust of the petition and entering into debate about a matter for which he obviously had strong feelings.

The issue of whether some Members have “unwittingly misled the House and misrepresented petitioners” is a more difficult one. The honourable Member for Victoria has not charged that any Member has intentionally misled the House. His complaint is that the language used exceeds the language of the petitioners. As I have pointed out, the Chair interrupted the honourable Member for Windsor—Walkerville on exactly this point.

I can assure the House that I will continue to be diligent and will remind honourable Members that they are to describe only the substance of the petitions when representing them to this House. I would like to thank especially the honourable Member for Victoria for bringing this matter to the attention of the Chair and the Chamber.

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1. *Debates*, November 6, 1986, p. 1131.
2. *Debates*, November 6, 1986, pp. 1147-51.

## THE DAILY PROGRAM

### Routine Proceedings

Presenting Petitions: delay in presenting petition after it has been certified; Members other than Members who specifically sought certification authorized to present petition

May 28, 1987

*Debates*, pp. 6500-1

**Context:** On March 23, 1987, Mr. Doug Lewis (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) rose on a point of order concerning the presentation of petitions by New Democratic Party Members. His point of order was twofold. First, he questioned the delay between the certification of the petitions by the Clerk of Petitions and their actual presentation in the House by certain Members. He pointed out that some Members presented petitions long after they had been certified. He argued that this practice delayed the redress of the grievances set out in the petitions, discredited the House and violated the fundamental right to present petitions to the Crown and to Parliament. Second, he referred to the practice where petitions are certified for one Member and presented by another. In Mr. Lewis' opinion, this practice misleads the House by giving the impression that concern over an issue is widespread since petitions are presented by different Members. Other Members also spoke to this point of order. After making some preliminary remarks, the Speaker took the matter under advisement.<sup>1</sup> On May 28, 1987, he delivered his ruling which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council has been patiently awaiting, for quite some time, the Chair's comments on a matter which he raised on March 23 last. The honourable Parliamentary Secretary, on a point of order, questioned the current practice with respect to the presentation of petitions. In particular, he pointed out a number of instances where petitions were certified by the Clerk of Petitions and then presented to the House some weeks or months later. He claimed that a lengthy lapse of time between the certification of a petition and its presentation in the House denied those Canadians who were petitioning the opportunity for speedy redress of their grievances. It also, he claimed, denied the Government the right to reply promptly.

So that all honourable Members and the public will understand, under the rules of this place when a petition is presented either by an honourable Member rising to his or her feet to present it, or by filing it at the Table, the Government is now required under the rules to reply to that petition in so many days. It is important that all honourable Members and the public which is watching this understand that because that is a key ingredient of these remarks.

The honourable Parliamentary Secretary is raising an extremely legitimate complaint here. Any Canadian who signs a petition would not expect that several months would elapse from the date the petition is first signed until a response is forthcoming. While a delay of several weeks is potentially required in order to allow for the collection of signatures, the transmittal to Ottawa, the certification by the Clerk of Petitions, the presentation in the House, and the response by the Government, most Canadians would agree that delays of some seven or eight months, as pointed out by the honourable Parliamentary Secretary, are difficult to justify.

The second point raised by the Parliamentary Secretary dealt with the presentation of petitions by Members other than the Member who had the petition certified. As honourable Members will know, before a petition can be presented it must be certified at the Table. He claimed that this practice would be misleading because when Members from across the country were presenting petitions the implication could be drawn that a particular issue was of more widespread concern to Canadians than possibly was the case.

By way of response to these two points let me first quote Standing Order 106(1) which states:

Prior to presentation, the Clerk of Petitions shall examine all petitions, and in order to be presented, they must be certified correct as to form and content by the said Clerk.

There is no specific mention in this Standing Order of any requirement to present a petition within a specific time frame, only the point that "prior to presentation" it must be certified. The Chair consulted the McGrath Committee report of June 1985 which recommended this particular Standing Order to see whether any indication was given there of a possible restriction on the period of time between certification and presentation but could find no guidance.

To take the matter further, in *Beauchesne* Fifth Edition Citation 691 states:

A Member cannot be compelled to present a petition. In a subsequent action, it was held that there is no right in a person desirous of petitioning the House to compel any Member to present his petition and that no action will lie against a Member for refusing to do so.

If there is no requirement that a Member present a petition, can there be a requirement that a petition should be presented within a specified period of time following certification? On March 23, 1987, the honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier) ably pointed out that various reasons might prevent a Member from presenting a certified petition expeditiously. I would suggest to Members that several months need not elapse between certification and presentation in most circumstances. However, I agree with the honourable Member for Churchill (Mr. Rod Murphy) that the present Standing Order does not impose any specific restriction.

To address the second point raised by the honourable Parliamentary Secretary let me quote Standing Order 106(4) which states:

Any Member desiring to present a petition, in his or her place in the House, may do so on "Presenting Petitions"....

There is no specific mention here that the Member presenting the petition must be the Member who had it certified, or indeed that it must be the Member in whose riding the petitioners reside. There is no restriction stated in the Standing Order. It merely states "any Member".

On a careful reading of the Standing Orders and a strict interpretation of those Standing Orders, I can find no requirement that the Member who has the petition certified must be the Member who presents it. In fact, as the honourable Member for Ottawa—Vanier pointed out, *Beauchesne* [Fifth Edition] Citations 689 and 690 specifically relate to Members presenting petitions for other Members.

However, because the current Standing Orders relating to petitions are provisional and have only been in force for a short time, and because the Standing Committee on Elections, Privileges and Procedure is in the process of considering the Standing Orders at the present time, it might be timely to suggest to members of this committee that they may wish to pay particular attention to the Standing Orders relating to the presentation of petitions, if as the honourable Parliamentary Secretary has contended, these particular Standing Orders are causing concern.

As these provisional Standing Orders are now written, I am unable to order that the Member who has a petition certified be the same Member who presents it to the House, nor can I define any time restriction for the period between the certification and the presentation of a petition.

I do, however, feel that the issues raised by the honourable Parliamentary Secretary are legitimate ones dealing with the fundamental right of every citizen to petition the House of Commons and to expect speedy redress. I would suggest to all Members that they give this issue their close attention. I thank honourable Members for their representations.

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1. *Debates*, March 23, 1987, pp. 4428-34.

## THE DAILY PROGRAM

### Routine Proceedings

#### Presenting Petitions: petition directly requesting a grant

June 30, 1987

*Debates*, pp. 7821-2

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**Context:** On June 15, 1987, Mr. Rod Murphy (Churchill) rose on a point of order concerning the right to present a petition that directly asks for a grant of money out of public revenues. The Member had been refused the required certification by the Clerk of Petitions who had referred to a particular citation in *Beauchesne*. The petition had sought funding from Parliament. The Member requested the Speaker to review the pertinent citation and to rule whether such a restriction continued to be relevant given the current situation and whether it violated the rights of citizens to petition Parliament. Mr. Doug Lewis (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) also spoke to this point of order. The Speaker took the matter under advisement.<sup>1</sup> On June 30, 1987, he delivered his ruling which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I am now prepared to rule on the point of order raised on June 15 by the honourable Member for Churchill concerning a petition he had hoped to present on child care.

The petitioners were calling upon Parliament to provide the provinces and territories with the immediate short-term funding to expand non-profit child care.

The Clerk of Petitions advised the honourable Member that his petition was out of order because it entailed public expenditures.

Let me say at once that the advice given to the honourable Member by the Clerk of Petitions was totally supported by long-standing precedents. Citation 685(3) of *Beauchesne* Fifth Edition states:

The House will refuse to receive any petition that directly asks for a grant of money out of the public revenues unless such grant has first been recommended by the Crown.

This citation is substantiated by all previous editions of *Beauchesne* in even greater detail, and also in all four editions of *Bourinot's Parliamentary Procedure*.

In addition, we have numerous precedents on the record in the form of Speakers' rulings, dating back to May 7, 1868.<sup>2</sup>

There was one case, on May 19, 1947, where the Speaker allowed a petition praying for an increase in old age pensions, but this was because the Governor General's recommendation had already been signified to a Bill having the same objective.<sup>3</sup>

An important ruling of June 7, 1972, emphasized that the Chair was obliged to ensure that petitions conform to "the historic practices and usages of the House". The Speaker added, and I quote:

At many times the House has shown itself willing to waive its rules, however strict, to allow the introduction or the passage of a measure it desires, but it has consistently refused to do the same with petitions.<sup>4</sup>

Like so many of our practices, this is one we inherited from the British Parliament. It has been governed by a Standing Order of the British House of Commons since 1713, and the financial initiative of the Crown was rooted in parliamentary procedure long before then.

We must, however, remember that at one time all legislation originated with a petition, and the practice of originating expenditure by means of a petition accompanied by a Royal Recommendation was not an unusual occurrence in the British Parliament.

On page 794 of *Erskine May Twentieth Edition*, it is indicated that "the regular use of petitions for initiating expenditures has lapsed", and the British House of Commons now has a Standing Order which prevents the reception of petitions proposing public expenditures in all circumstances.

It is interesting to note, however, that until 1963, a petition from the British Museum for a grant in aid was presented annually by the Home Secretary, who signified the Royal Recommendation.

Faced with such a weight of precedent, the Chair feels unable to reverse a long-standing practice, about which there is no doubt whatsoever. However, I have great sympathy for the argument made by the honourable Member for Churchill, an argument which, as honourable Members will recall, was fully supported by the honourable Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council.

The right to petition Parliament is fundamental to our parliamentary system, and it is not unreasonable to assume that the remedy, in many a situation, could only be found through the expenditure of public funds. A petitioner is entitled to petition for relief in a burdensome situation, so that a mere change in wording could well render a petition in order which might otherwise be out of order. A petition praying for the enactment of a measure which would provide the relief being sought might avoid the restriction imposed by our practice.

Personally, I think that a petition does not fall into the same category as bills, and that if it seeks to change the current practice, however deeply anchored in history it may be, the House ought to consider this procedure. This is the kind of question which the Standing Committee on Elections, Privileges and Procedure might very well entertain, and I intend to draw the attention of the Committee Chairman to my ruling.

I would say to the honourable Member for Churchill and the honourable Parliamentary Secretary that this is certainly a matter in respect of which the Chair can say, despite the deep and long history, which makes it very unwise for the Chair to unilaterally change the practice, the House should consider the practice again; and if the House wishes to make changes, it is perhaps time to consider doing so.

I thank both honourable Members for their interventions.

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1. *Debates*, June 15, 1987, p. 7097.
2. *Debates*, May 7, 1868, p. 645.
3. *Journals*, May 19, 1947, p. 423.
4. *Debates*, June 7, 1972, p. 2921.

## THE DAILY PROGRAM

### Routine Proceedings

Presenting Petitions: petition signed by non-residents of Canada

December 19, 1990

*Debates*, pp. 16963-4

**Context:** On December 18, 1990, Mr. Nelson Riis (Kamloops) presented a petition and listed the place of residence of petitioners. The list contained the names of some persons not resident in Canada. Mr. Don Boudria (Glengarry—Prescott—Russell) rose on a point of order to argue that the petition was out of order since only those petitions signed by residents of Canada were admissible. Moreover, he asked how it was that under the circumstances, the petition had been duly certified. The Chair took the matter under advisement<sup>1</sup> and on December 19, 1990, made a ruling which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**The Acting Speaker (Hon. Steven Paproski):** I have a statement. On Tuesday, December 18, 1990, the honourable Member for Glengarry—Prescott—Russell raised a point of order regarding the acceptability of a petition which the honourable Member for Kamloops had risen to present.

The petition in question contained, in addition to the signatures of Canadian residents, the signatures of several persons not resident in Canada. The Member for Glengarry—Prescott—Russell rightly pointed out that it is not the practice of this House to receive petitions from non-resident aliens. Citation 688(1) of *Beauchesne* Fifth Edition reads as follows:

Aliens, not resident in Canada, have no right to petition Parliament.

This citation is based on a ruling recorded in the *Journals* for March [30], 1880 at page 165. The Chair faces a dilemma however. If this petition cannot be presented because it contains several unacceptable signatures, then those Canadians who signed the petition in good faith will be denied this opportunity to petition Parliament.

When Speaker Bosley was faced with a similar situation in November 1984, he made the following statement:

On reviewing the Canadian and British precedents, I found no clear answer to the admissibility or non-admissibility of a petition which is signed by Canadian citizens and, at the same time, by non-Canadian citizens not resident in Canada. In October 1983, Madam Speaker Sauvé ruled that a petition signed by American citizens was not receivable. That petition was signed exclusively by American citizens. Our precedents on petitions related to private bills indicate that petitions from foreigners have been accepted,

from time to time, when the subject matter related to legislation or an area of jurisdiction of the Canadian Parliament.

Accordingly, since I could find no clear direction in our practice and procedure, and so that those Canadian citizens who signed the said petition not be denied their ancient right to petition the House of Commons, and since this is the first time this issue has arisen in this Parliament, I ask the House that the petition presented by the honourable Member for Ottawa Centre be received by unanimous consent.<sup>2</sup>

After having considered the problem, the Chair believes that the right of Canadians to petition their House of Commons would be better served if petitions, which are otherwise in order and have been so certified by the Clerk of Petitions, can be presented even if they contain the occasional signature of a non-Canadian not resident in Canada.

Such signatures would not, of course, be counted among the 25 signatures which a petition must contain in order to be certified. I therefore rule the petition which the honourable Member for Kamloops intended to present on Tuesday, December 18, duly certified and presented to the House. I must thank the honourable Member for Glengarry—Prescott—Russell for bringing this matter to the attention of the Chair.

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1. *Debates*, December 18, 1990, p. 16874.

2. *Debates*, November 20, 1984, p. 412.

## THE DAILY PROGRAM

### Routine Proceedings

#### Presenting Petitions: lateness in the Government's response

February 8, 1993

*Debates*, pp. 15561-2

**Context:** On February 8, 1993, Mr. Jesse Flis (Parkdale—High Park) rose on a question of privilege regarding the Government's responses to petitions. The Member argued it was unacceptable that nearly three hundred days had elapsed between the time his petitions were presented and the Government had provided responses. He maintained this practice violated the Standing Order stipulating that responses must be provided within forty-five days after the petition had been presented. Mr. Jim Edwards (Parliamentary Secretary to the Minister of State and Leader of the Government in the House of Commons) undertook to inquire into the reasons for this delay.<sup>1</sup> The Speaker made an immediate ruling which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Parkdale—High Park has raised a matter which has been raised before in this House. There is a rule as the honourable Member referred to it and read it to the House.

With this kind of application which is an application to the Chair to find that the privileges of the honourable Member have been breached because there has not been a response to a petition within the number of days set out in the rules, the difficulty is that there is no sanction in the rules. The Chair has had to say in the past that it is extremely difficult to come up with a lawful response.

I have said in the past and I hope I am not going to have to say it in the future but I echo again what the honourable Parliamentary Secretary said. The rule is there and for whatever reason it has not been complied with. It was not put in there in the first place I am sure with the intention of not being complied with but as the honourable Member who has brought the application knows, this is not the first time the Chair has had to deal with it.

The best way to deal with it at the moment is to accept the undertaking of the Parliamentary Secretary that he will make an inquiry—I hope it will be an immediate inquiry—and that he could raise the matter again perhaps some time tomorrow....

I want to assure honourable Members that the Chair is not treating it other than as a serious matter. I am calling to the attention of honourable Members that there is a rule. There is no sanction. It may very well be that it ought to be considered by honourable Members and ought to be remedied.

In the meantime with this particular case and keeping in mind the matter raised by the honourable Member and the fact that clearly there is here a breach of the rules and the sensitivities of the honourable Members and the sensibilities of the honourable Member's petitioners, I think the appropriate thing at least for today is to ask the Parliamentary Secretary to address the House tomorrow and see if there is some explanation at least. That may not fully satisfy the honourable Member or honourable Members, but at least for today that is where I would like to leave it.

*Postscript: The next day, Mr. Edwards apologized to the Member of Parliament on behalf of the Department of Employment and Immigration for the considerable delay in responding to the petitions. Mr. Flis thanked the Parliamentary Secretary and accepted his apology.<sup>2</sup>*

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1. *Debates*, February 8, 1993, pp. 15560-1.
2. *Debates*, February 9, 1993, p. 15602.

## THE DAILY PROGRAM

### Routine Proceedings

Questions on the *Order Paper*: compliance with forty-five day time limit for Government response; authority of the Speaker in this regard

May 18, 1989

*Debates*, p. 1890

**Context:** On May 18, 1989, Mr. Rod Murphy (Churchill) rose on a point of order concerning a number of questions on the *Order Paper* to which Members had requested a response within forty-five days and to which answers had not yet been provided. The Member argued that the Government was not complying with the deadline set out in the Standing Orders and called upon it to produce answers to the questions. Other Members also intervened on the matter.<sup>1</sup> The Speaker ruled immediately and his ruling is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** This is not the first time that this matter has been brought to the attention of the Chair. I said some time ago that whatever the rule may be—and I will refer to the rule in a moment—there is no power given under the rule to the Chair to order the Government to produce an answer within 45 days. I want that clearly understood, not just by honourable Members but by anybody who may be watching or listening.

The second thing I want to point out is that if one looks carefully at Standing Order 39 which is headed “Written Questions” and comes to paragraph 5, this is exactly what it says:

A Member may request that the Ministry respond to a specific question within forty-five days by so indicating when filing his or her question.

I draw to the attention of honourable Members and to all others who are interested that “a Member may request”. As I read that, that is not a right. It is a request. There is a distinction.

Having said that, there is no doubt in my mind that the intention of the reform committee in bringing about this rule was that when written questions are put forward, it is the better part of virtue for the Government to reply within 45 days if the Member has asked for that.

An honourable Member just said something about who has to prepare the returns. Ultimately, under our system, of course the Minister is responsible. But I hope that somebody notices that the Speaker has observed that people who are in the service of the public, who have to bring these answers back, ought to take a look at this rule and realize that it does not just hang there without any purpose.

As far as I am concerned, I do not think it is appropriate that the time of this House has to be taken up by Members having to get up and ask why somebody has not given them the answer.

The honourable Member for Churchill made it quite clear. If there is a case where something is so complicated that it is impossible for the Government to give the answer within 45 days, I think honourable Members would be patient and understanding if the Parliamentary Secretary or Minister got up and said that that was the dilemma they found themselves in.

For the most part, there is no real reason in the world why these answers cannot be given. As I say, I cannot order them to be given because I do not have the power. But I do ask that those who are asked to prepare these answers take a look at this rule and realize that when they do not get the answer back to their Minister in time, they are putting all of us through a lot of difficulty and taking up the time of the House, because undoubtedly there will be more points of order raised on exactly this issue.

Short of the authority to order somebody to do anything, I cannot make my own feelings on this matter any more clear than I have just done.

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1. *Debates*, May 18, 1989, pp. 1888-90.

## THE DAILY PROGRAM

### Routine Proceedings

Questions on the *Order Paper*: request to transfer certain written questions to notices of motion for the production of papers

June 14, 1989

*Debates*, pp. 3023-6

**Context:** On May 29, 1989, Mr. Albert Cooper (Parliamentary Secretary to the Leader of the Government in the House of Commons) asked the Speaker to look at a number of questions on the *Order Paper* to see whether they could stand as notices of motion for the production of papers pursuant to Standing Order 39(6). Noting that such a request had not been made in a good many years, that other Members might wish to speak to this issue and that the Chair would like a little more time to consider this procedure, the Speaker indicated that he would reserve his decision until later.<sup>1</sup> The following day, Mr. Cooper and other Members presented arguments.<sup>2</sup> The Speaker considered the matter and made his ruling on June 14, 1989. It is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** The Chair is now prepared to rule on the point raised on May 29 and May 30, 1989 concerning the uses of Standing Order 39(6) and Questions on the *Order Paper*.

Before summarizing the situation, I would like to say a word of appreciation for the contribution that Members made to this somewhat complicated question. I should remark that it is really a complicated question and this ruling will take a little time.

It would be appropriate at this point to outline succinctly the procedure on written questions. It provides that Members seeking from the Ministry information relating to public affairs may place on the *Order Paper* after due notice of 48 hours up to four written questions at any one time. There are several restrictions covering the form and content of such questions. For example, argumentative material or unnecessary facts are not allowed, nor is the offering of opinions on a question. Also, no debate is permitted when a question is put on the *Order Paper* or when it is answered by the Government. The Clerk of the House has the responsibility to ensure that coherent and concise questions are placed on the *Notice Paper* as stated in Standing Order 39(2).

Finally, a Member may require that up to three of the four questions be given an oral answer in the House and may also request that the Ministry respond to the question within 45 days.

In due course, the Minister to whom a written question is addressed will answer it, usually through the Parliamentary Secretary to the Government House Leader. The answer can be given orally in the House, if an oral answer has been requested, or by handing a written document to the Clerk during Routine Proceedings. Whether the answer is given orally or in writing, the full text will be printed in the *Debates* of the same day. However, on occasion, because of the length of an answer, a request is made by the Government to have the question made an order for return and the answer is then tabled in the House and filed as a sessional paper which is available, on request, to all Members.

Let me now summarize the procedural difficulty which I was asked to examine on May 29 and May 30. Briefly, Standing Order 39(6) states that at the request of the Government the Speaker examines a particular question or questions and, if it appears that a question "is of such a nature as to require a lengthy reply, the Speaker—may direct the same to stand as a notice of motion—upon the *Order Paper*," with such changes in form as are required for this transformation.

On May 29, the Parliamentary Secretary to the Government House Leader asked the Chair to deal with seven *Order Paper* questions in relation to Standing Order 39(6), namely, Questions Nos. 45, 52, 53, 62, 64, 83 and 88.

I advised the House at the time that the Chair would wish to consider the matter with great care and invited interested Members to make comments at a later date.

The next day, a number of Members came forward to assist the Chair in analysing the question. As I have said, these remarks were very helpful.

The Parliamentary Secretary to the Government House Leader stated what I believe all Members can agree with: that the process of placing questions on the *Order Paper* is important and fundamental, both to the House and to individual Members on all sides, and that it is a process well worth examining. He then went on to point out that some questions asked are so complicated, require the gathering of so much new information that they are impossible to answer within a 45-day limit and in some cases difficult to answer at all. He said, and I quote his words from page 2338 of *Hansard* of May 30, 1989:

There is no longer a concern about how impossible it may be to answer.

I think we would also have to agree that this is sometimes the case. The Chief Government Whip (Mr. Jim Hawkes (Calgary West)) as reported at page 2340 of *Hansard* commented that "the form in which some come forward to Government put a kind of straitjacket on us". He also reminded the House that, as I have remarked on many occasions before, the Chair must interpret the Standing Orders as they exist. If some aspect of the rules are unsatisfactory to the House, it is the House that must provide the remedy. The Chief Government Whip's reference to the number of unanswerable questions in the last Parliament points

out a particular problem, and I was very interested in his suggestion, minor alterations in form might have made it possible to answer many of those questions fairly quickly.

The honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier) argued ably for a continuation of current practice in regard to these questions: that is the transformation of questions requiring long answers into Orders for Returns—the latter to be tabled immediately, or at some later time. He stressed the role of the Chair as the protector of all Members' rights: a role that the Chair must certainly always bear in mind.

The honourable Member for Kamloops (Mr. Nelson Riis) indicated the possibility that the practices of the House may have changed so greatly in the last 60 years that to invoke a rule which has fallen into disuse as it stands may be to risk moving counter to the spirit in which it was originally adopted. Both he and the honourable Member for Hamilton East put the matter in the context of the recent parliamentary reforms which have done so much to revitalize the House.

The honourable Member for Okanagan—Similkameen—Merritt (Mr. Jack Whittaker) pointed out that there is very little explicit indication in the Standing Orders of what length or degree of complication a question should have. The honourable Member for Mackenzie (Mr. Vic Althouse) was able to assist us with his experience on the McGrath Committee where such guidelines had been discussed.

He went on to make several other points that the Members of the House ought to be left to decide for themselves whether or not to give notice of a motion similar to their question; that the framer of a question is a participant in the process and should expect the quality of the question to have a strong effect on the framing of the answer; and that most Members would consider a response declining to answer the question, for a stated reason, to be legitimate.

Finally, the honourable Member for Kingston and the Islands (Mr. Peter Milliken) pointed out that a Private Member's Notice of Motion had a far better chance of coming before the House formerly than it has now. He suggested that either the proposal of the Parliamentary Secretary or the Standing Order itself might profitably be referred to the Procedure Committee for study and review.

The Chair has now had time to consider the matter at length. The use of Standing Order 39(6) appears simple enough at the outset; but as we have seen, upon examination it grows more complex and elusive.

The dilemma is this: we must find a balance between the urgent requirements of Members who need information in order to function and the equal imperative of a rational and fair use of the limited resources available to provide answers.

In an attempt to find this balance, the honourable Parliamentary Secretary asked the Chair several days ago to act under the provision of Standing Order 39(6), which permits—and I wish to emphasize the word “permits”—the Speaker to transform into a Notice of Motion any question which is brought to his attention by the Government and which he considers would require a “lengthy” reply.

I must emphasize, at the outset, that the Parliamentary Secretary’s request is indeed quite legitimate and well within the bounds of our Standing Orders. As a matter of fact, this practice, if implemented in today’s House, would certainly go some distance to solving the problem we have outlined. The pressure of the 45-day limit in which to provide “lengthy” answers would be relieved. Since not all of these motions would be agreed to, or even considered, the work-hours available might be more fairly and more widely distributed among Members’ questions requiring shorter answers. As for those converted to motions, as the Chief Government Whip has pointed out, the decision whether these more “expensive” answers should be provided would then be made by the House.

Unfortunately, it appears that this proposed solution may carry with it a new set of problems. It has been suggested that the use of this Standing Order might result in unreasonable limits in the freedom of Members to ask questions; it is even speculated that privilege might be involved. It has also been suggested that the Standing Order has survived so long unchanged because it has remained unused for the past 60 years; that its use in today’s context may not be what was intended; and that it no longer fits the conditions of the present House of Commons, and certainly not those brought about by the McGrath reforms.

I share the view expressed by several Members that the direct consequence of transforming a written question into a Notice of Motion, to be eventually considered under Private Members’ Business when transferred for debate, will be to diminish considerably the chances of the item ever being put before the House again. But it is interesting to see that such a difficulty had also been envisaged back in 1906 when Standing Order 39(6) was first adopted by the House. May I quote from the *House of Commons Debates* on July 10, 1906 at page 7602:

Mr. Sproule: Then after a certain stage in the session notices of motion cannot be reached and in the case of a long question, if the government do not want to give the information all they have to do is [to] say: You must move for it. There may be no opportunity to move and therefore the opposition are prevented from getting the information.

Certainly, I can tell the House that a request to invoke Standing Order 39(6) would undoubtedly always put the Speaker in a difficult position. It would require the Chair to make a series of decisions on non-procedural matters for which there is no information available and which only the Government, with its expert staff, is able to judge accurately: the probable length of answers which have not yet been produced. It is also true that no objective definition of “lengthy” has been

provided; and in any case, it would be rash to suppose that the difficulty of answering a question must vary according to its length, or that the value of an answer is in any way proportionate to its length.

In addition, not all questions rejected as unanswerable can reasonably be converted into motions requesting the tabling of documents. Unless the question itself inquires specifically about a document, converting it into a notice of motion for the production of papers might well make it even harder to answer satisfactorily.

Another concept with which the Chair has some difficulty is that of placing on the *Order Paper*, in the name of a Member of this House, a notice of motion which that Member has not signed or indicated any interest in presenting. As the honourable Member for Mackenzie pointed out, if a Member has a question refused and wishes to present a notice of motion on the same subject, he or she is perfectly able to do so.

I have examined very carefully the request of the Parliamentary Secretary to the Government House Leader and find that I am unable for several reasons to comply with the terms of the Standing Order in today's context without prejudicing the right of private Members to control fully their business by choosing for themselves how best to seek information: by placing questions on the *Order Paper*, perhaps requesting an answer from the Government within a 45-day period; or by having a Notice of Motion, if successful in the draw, debated during Private Member's Business.

The House will understand that two new elements which were recently incorporated in the Standing Orders on written questions have practically eliminated the kind of abuses on House time that existed in 1906. I am referring specifically to Standing Order 39(4) limiting the number of questions on the *Order Paper* to four per Member at any one time and to Standing Order 39(5) allowing a Member to request that the Ministry respond to a question within 45 days.

The Chair is extremely concerned that allowing the Government's request to transform a question into a Notice of Motion would appear as a step backwards in the evolution of the procedure governing written questions and would go against the expectation of the McGrath reform to have a more efficient method of dealing with questions.

As indicated by several honourable Members, there is a long-standing practice which allows the Government to ask the House, in those instances when there is to be a lengthy reply, that the question be made an Order for Return. Such a Return is then either tabled forthwith, if the reply is ready, or tabled at a later date on completion of the reply.

There is also a procedurally quite acceptable practice—and indeed many honourable Members have suggested that it is quite legitimate for the Government to do so—simply to respond by saying that the question cannot be

answered because of the time and the human or financial resources involved. May I refer honourable Members to Questions Nos. 8, 11, 12, 13 and 14 already answered in such a way by the Government during the current session.

The Government may continue the practice of simply declining, with an explanation, to answer questions which it finds are too burdensome. An explanation could also be given, during Routine Proceedings, that certain questions could not be answered within the requested time and perhaps reasons for that could be given. It should be understood that there is no obligation on the Government to provide a perfect answer, only a fair one. A Member in framing his or her question would accept part of the responsibility for the quality of the answer.

It is possible that the problems we now face arise partly as a result of recent reforms. The McGrath Committee foresaw some of the difficulties and commented, on page 46 of its report: "To avoid the possibility that Members would try to get around the four-question rule by asking questions containing numerous sub-questions, all written questions should be directed to the Clerk for close and careful scrutiny as to form and content."<sup>3</sup>

In that regard, the Clerk of the House must apply more rigorously the provisions of Standing Order 39(2) and, as stated in recommendation 7.10 of the report from the McGrath Committee:

.... reject outright or to split into separate and distinct questions those questions that contain unrelated sub-questions.

No doubt there are many other solutions which could also be explored. It appears to the Chair that the subject is worthy of consideration at some greater length than we have been able to devote to it here. In fact, the Chair would welcome the guidance of the Standing Committee on Elections, Privileges, Procedure and Private Members' Business in this matter. The Committee can do that within its mandate, or if the House is so inclined, a specific Order of Reference could be given to the Committee, as the honourable Member for Kingston and the Islands has suggested. In any case, as Speaker, I strongly suggest to the Members of that Committee that their recommendations on this question would be extremely useful to the Chair. Perhaps we may hope for some guidance from the Committee on this issue.

In the meantime, however, I must regretfully state that the Chair cannot agree to the request of the honourable Parliamentary Secretary.

I want to say in addition that the Chair is extremely cognizant of the fact that this is not a one-sided issue. If honourable Members will read carefully the decision which I have just rendered, I think it will be made clear that I am concerned as Speaker that both sides of the House are treated fairly in what is clearly becoming a problem. I would hope that the House, as I have suggested, would move to find a solution. I thank honourable Members.

**Postscript:** No official measures were taken by the Standing Committee on Elections, Privileges, Procedure and Private Members' Business as a result of the suggestions made by the Speaker.

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1. *Debates*, May 29, 1989, p. 2228.
2. *Debates*, May 30, 1989, pp. 2333-44.
3. Third Report of the Special Committee on the Reform of the House of Commons, tabled in the House on June 18, 1985, *Journals*, p. 839.

## THE DAILY PROGRAM

### Routine Proceedings

Questions on the *Order Paper*: additional information provided along with the answer; indication of approximate cost of providing replies; prohibition against argument, opinion, and unnecessary facts applies to both questions and answers

October 2, 1991

*Debates*, p. 3147

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**Context:** On September 17, 1991, Mr. Albert Cooper (Parliamentary Secretary to the Leader of the Government in the House of Commons) provided answers to several questions on the *Order Paper*. Additional information was also supplied as to the time taken to prepare each answer and the approximate cost of providing the reply.<sup>1</sup>

The next day, Mr. Peter Milliken (Kingston and the Islands) rose on a point of order concerning this matter. He argued that the Government was including extraneous details in the responses which bore no relation to the question and which could suggest that Members were wasting public money. He called upon the Speaker to order an end to this practice. Other Members also intervened on the matter.<sup>2</sup> The Speaker considered the matter and made his ruling on October 2, 1991. The ruling is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Wednesday, September 18, the honourable Member for Kingston and the Islands rose on a point of order concerning the answers provided by the Government to written questions placed on the *Order Paper*, pursuant to the provisions of Standing Order 39, and printed in *Debates* of Tuesday, September 17.

He brought to the attention of the House the inclusion in those answers of statements of the amount of time required to prepare each answer and the approximate cost of providing the reply. In his presentation the honourable Member noted that such material was extraneous to the question and argued that it should not be included in the answer.

At the time, very helpful interventions were made by the Government House Leader (Hon. Harvie Andre) and his Parliamentary Secretary, as well as the honourable Members for South West Nova (Mrs. Coline Campbell) and for Thunder Bay—Atikokan (Mr. Iain Angus).

Standing Order 39 states the procedure for dealing with Questions on the *Order Paper*. The portion of the Standing Order relevant to the present situation reads as follows and I quote:

.... in putting any such question or in replying to the same no argument or opinion is to be offered, nor any facts stated, except so far as may be necessary to explain the same; and in answering any such question the matter to which the same refers shall not be debated.

In reviewing the provisions of the Standing Order as well as its history, it is interesting to note that generally the problems with this rule which have arisen in the past have been with the wording and nature of questions, rather than with answers.

This is why the Clerk of the House is charged with the task of examining notices of questions to ensure that they meet the requirements of Standing Order 39(1) before they are placed on the *Notice Paper*. They are scrutinized as to the correctness of their form and content.

As noted in the *Annotated Standing Orders* on page 126, the principles guiding the Clerk are that no argument or opinion is to be offered nor any irrelevant fact stated in the question. Thus is ensured the primary purpose of such questions as stated in the Standing Orders, that is, the seeking of information from the ministry relating to public affairs.

The requirements that questions presented offer no argument or opinion, nor any other facts except as may be necessary, were extended to the replies to questions in 1906. This was done expressly to ensure that the process remained an exchange of information rather than becoming an opportunity for debate.

Therefore, in the present circumstances, since the type of information referred to by the honourable Member for Kingston and the Islands is not germane to the information requested, I would ask the honourable Government House Leader and his Parliamentary Secretary to review carefully the replies provided by the ministry to be published in the *Debates* to ensure that, in future, all such answers conform to the provisions of Standing Order 39.

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1. *Debates*, September 17, 1991, pp. 2202-19.
2. *Debates*, September 18, 1991, pp. 2317-9.

## THE DAILY PROGRAM

### Adjournment Proceedings

#### Introduction

One Standing Order provides for an automatic adjournment of the House on each sitting day, while another stipulates that motions to adjourn the House are not debatable. As an exception to these rules, the House has agreed to a third Standing Order (first adopted in 1964) which provides that on four days of the week the Speaker will deem that a motion to adjourn the House has been moved and seconded, and an adjournment “debate” will then take place. This debate, officially called the Adjournment Proceedings, is more familiarly known as the “Late Show”.

The adjournment debate is used as a vehicle for brief exchanges on predetermined topics. The proceedings can take up to 30 minutes, at which time the motion to adjourn is deemed carried.

During Speaker Fraser’s term, the Standing Orders pertaining to the daily adjournment debate were revised in two major respects. When Speaker Fraser was first elected, the Standing Orders provided for three matters to be considered for no more than 10 minutes each. The purpose of the adjournment debate was to provide those Members who were dissatisfied with an answer given to them during Question Period with an opportunity to raise the subject-matter at adjournment, as well as an opportunity for the pertinent Minister or Parliamentary Secretary to speak on the matter as well. In April 1991, the Standing Orders were amended to provide debate on any one matter could be considered for no more than six minutes, thus increasing the number of Members who could be heard during the overall 30-minute period.

As well in April 1991, amendments to the Standing Orders were adopted with respect to *Order Paper* questions and which impacted on the adjournment debate. The new rules provided that if a Member had not received an answer to a particular *Order Paper* question within a forty-five day period, he or she could then request to have the question transferred and the subject-matter of the question raised on the adjournment of the House. Thus, there were now two ways for a Member to be included on the list to take part in the adjournment debate: by written notice to the Speaker within one hour following Question Period (with reference to dissatisfaction with an answer given in Question Period), or by oral notice in the House when the rubric “Questions on the *Order Paper*” were called under Routine Proceedings (with reference to a question on the *Order Paper* not being answered within the required forty-five day period).

The Chair Occupants remain responsible for order and decorum during the adjournment debate, as with any other proceeding in the House. One of the rulings in this chapter thus reiterates those of past Speakers, by emphasizing that

points of order should not be raised during this period. In addition, a ruling indicates the first and only transfer of a written question to take place during Speaker Fraser's term.

**THE DAILY PROGRAM****Adjournment Proceedings**

Chair does not usually hear points of order during Adjournment Proceedings

December 5, 1991

*Debates*, p. 5892

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**Context:** On December 5, 1991, Ms. Joy Langan (Mission—Coquitlam) had discussed the issue of the Meme breast implants during the Adjournment Proceedings. Following the reply by the Parliamentary Secretary to the Minister of Forestry (Mr. Michel Champagne), Ms. Langan attempted to rise on a point of order.<sup>1</sup> The decision of the Deputy Speaker (Hon. Andrée Champagne) is reproduced in part below.<sup>2</sup>

**DECISION OF THE CHAIR**

**Madam Deputy Speaker (Mrs. Champagne):** I have a difficulty right now because our rules say that I should not have accepted a point of order in the midst of the adjournment motion. This is the adjournment motion, which is what the late show is called. I should not accept points of order during this part of our debate.

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1. *Debates*, December 5, 1991, pp. 5891-2.

2. Other decisions indicating that points of order could not be raised during Adjournment Proceedings can be found in *Debates*, January 27, 1987, p. 2764; May 21, 1992, p. 11053; and June 2, 1992, p. 11283.

## THE DAILY PROGRAM

### Adjournment Proceedings

Request to transfer subject matter of *Order Paper* question to Adjournment Proceedings

November 20, 1992

*Debates*, p. 13720

**Context:** In April 1991, the Standing Orders were amended to provide that a Member, upon placing a written question on the *Order Paper*, could signal that he or she wished it to be answered within forty-five days. If the question remained unanswered at the end of that time period, the Member would then have the option of transferring the question and raising the subject matter on the adjournment of the House. On at least three occasions,<sup>1</sup> the Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper), in responding to points of order and questions of privilege pertaining to the failure of the Government to answer such questions within the forty-five days, suggested that Members invoke the new section of the Standing Order which would allow debate on the subject matter of the question to take place on the adjournment motion. On November 20, 1992, Mr. Robert Skelly (Comox—Alberni) rose on a point of order when the rubric “Questions on the *Order Paper*” was called to indicate that although he had two questions (Nos. 283 and 284) on the *Order Paper* since April 1992, the Government had not yet answered them. He requested that Question No. 283 be transferred to the Adjournment Debate.<sup>2</sup> The Deputy Speaker (Hon. Andrée Champagne) replied immediately.

### DECISION OF THE CHAIR

**Madam Deputy Speaker (Mrs. Champagne):** As far as Question No. 283 is concerned, our rules do provide for such a procedure. It is agreed and so ordered.

**Postscript:** The debate on the subject matter of the question (human rights) took place on November 24, 1992, and can be found in *Debates*, pp. 13987-8. This represented the only question to be transferred during Speaker Fraser's term.

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1. *Debates*, November 1, 1991, pp. 4382-3; November 22, 1991, pp. 5221-2; March 10, 1992, pp. 7936-8.
2. *Debates*, November 20, 1992, p. 13720.



## CHAPTER 4 — THE DECISION-MAKING PROCESS

### Introduction

Although the House of Commons is popularly known as a deliberative assembly, it is fundamentally a decision-making body. Its rules and practices are ultimately designed to allow its members to adopt or negate the proposals before it. The Speaker and the Chair Occupants are, of course, responsible for maintaining order and decorum during the entire decision-making process, and for deciding all questions of order.

The decisions selected for this chapter have been grouped for convenience under two themes: first, those decisions relating to the procedural acceptability of motions and amendments during the notice and debate stages of the process, and second, those decisions relating to the rules and practices of the taking of divisions, the final step of the process.

During his term, Speaker Fraser handed down a number of key decisions on motions and amendments. For example, he ruled that a Government motion to suspend the provisions of the Standing Orders with regard to days and times of sitting may appear on the *Notice Paper* under “Motions”, as part of Routine Proceedings, or under “Government Notices of Motions”. He also found such motions in order if they apply for a limited time and pass with a simple majority vote of Members present. He ruled that a Government motion urging a provincial legislature to take a certain action is also in order; it does not constitute encroachment on an area of provincial jurisdiction. It was determined that the Speaker’s authority to modify a motion extends to complicated motions (i.e. motions containing two or more propositions, each capable of standing on its own). Finally, the Speaker made clear that a motion must be submitted within the deadline set down in the Standing Orders, and if it is submitted by fax, it must be followed by an original copy signed by the Member.

With respect to divisions, whether taken by voice vote or recorded division, many of the Speaker’s decisions involved the issue of proper decorum and, indeed, the Chair reminded the Members of the necessity of maintaining the authority and dignity of the House when voting, no matter how disputatious the measure being voted upon. The Chair clarified the rules and practices concerning the length of time for the ringing of bells calling Members to a vote. Two key rulings, one reflecting on the role of the Whips in the voting procedure and the other reflecting on the practices with respect to “pairing”, are also included in the chapter.

In addition, two selected decisions touch upon the issue of “unanimous consent”, also an element in the decision-making process. In one case, Speaker Fraser expressed concern about the measures agreed to by unanimous consent during debate on a Government motion, while in a second case, he was asked to rule on the procedural acceptability of a proposed new Standing Order (Standing Order 56.1) which to some Members appeared to by-pass the requirement for unanimous consent.

## THE DECISION-MAKING PROCESS

### Motions and amendments

Motion: Government motion to suspend various provisions of the Standing Orders; admissibility and *Order Paper* heading

June 13, 1988

*Debates*, pp. 16376-9

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**Context:** On June 6, 1988, the Hon. Herb Gray (Windsor West) rose on a point of order regarding the admissibility of a Government motion suspending the application of various provisions of the Standing Orders with respect to days and times of sittings, so that the House could sit during the summer. The Speaker ruled that it was premature to debate this point of order and suggested postponing debate until the motion in question had in fact been moved.<sup>1</sup>

The following day Mr. Nelson Riis (Kamloops—Shuswap) rose on a point of order regarding the same motion. It had appeared on the *Order Paper* under the heading "Government Notices of Motion," and Mr. Riis argued that it should be part of Routine Proceedings, under the heading "Motions." His argument was twofold. First, the motion involved the organization of the business of the House and motions of this type should appear under "Motions." Second, though the proposed delay in adjourning the House was the result of a desire to spend more time on Government Orders, any motion to extend the session affected private Members' business and Question Period, and neither of those was a matter of Government business. The motion therefore had no place under "Government Notices of Motion." Other Members also addressed the issue.<sup>2</sup> The Chair noted the arguments and reminded the House again that this procedural point had perhaps been raised prematurely.

On June 9 and 10, 1988, as the House prepared to debate the content of the motion, the Speaker allowed Members to address its admissibility. A number of Members argued that the motion was out of order because it suspended the application of the Standing Orders and threatened the principle that debate takes place in the House according to established rules that are familiar to all Members. In their opinion, the motion might become a precedent allowing the majority to suspend the Standing Orders whenever it liked. These Members asked the Speaker to use the prerogatives conferred on him by Standing Order 1 to find the motion out of order. Some Members also argued that the motion was out of order because it encroached on the power to summon Members vested in the Speaker only.<sup>3</sup> The Speaker reserved judgment. On June 13, 1988, he delivered his ruling, which is reproduced in full below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On June 7, 1988, the honourable Member for Kamloops—Shuswap rose on a point of order relating to Government Business No. 26 on the *Order Paper*. The item of business deals with the Government's proposal to suspend certain Standing Orders and to provide for the sitting of the House until September 9, 1988, without the usual summer recess. He specifically complained

that the Government should be required to give notice under Motions under Routine Proceedings rather than under Government Notices of Motions.

When Government Order No. 26 was called on June 9 and June 10 last, the honourable Member for Windsor West rose to object to the procedural acceptability of the motion. His argument was principally that the Government, in proceeding this way, was abusing the principle of majority rule and oppressing the minority Parties in the House. He asked the Speaker to intervene in his role as the protector of the minority and to use the powers vested in the Chair by virtue of Standing Order 1. He also argued that if this motion is allowed to be proposed, the Government could use the precedent in future and possibly do away with committee hearings, second reading debates on Bills and even votes on Bills.

The honourable Member for Windsor West was supported in that argument by the honourable Member for Kamloops—Shuswap. Several other honourable Members, in particular the honourable Member for Winnipeg—Birds Hill (Mr. Bill Blaikie), appealed to the Chair to save the parliamentary calendar which was the fruit of the labours of two important reform committees: the Lefebvre Committee and the McGrath Committee.

The honourable Members for Ottawa—Vanier (Mr. Jean-Robert Gauthier), for Saint-Jacques (Mr. Jacques Guilbault) and for Saint-Denis (Mr. Marcel Prud'homme) stated that the Government could in fact call back the House during the summer under Standing Order 5, but they said that it should not be empowered to do so by a simple motion. Several other honourable Members took part in the discussions on the procedural acceptability of this motion and I am grateful to them for their valuable contribution to this debate.

The Chair will address the major points in the following order:

- 1) Was it proper for the Government to give notice under Government Notices of Motions?
- 2) Can the Government initiate a motion to suspend the provisions of the Standing Orders?
- 3) Does such a motion, if in order, require unanimous consent or simply a majority decision of the House?
- 4) If the motion is in order according to precedence, has the recent parliamentary reform changed our practice fundamentally and rendered prior precedents inapplicable?

Before attempting to answer those basic issues, I believe it would be useful to remind honourable Members and the public of the specific effect of this government motion if it is adopted by the House. I should also reassure honourable Members that its passage would not throw out the rule book, nor

would it destroy the major recent reforms. It would, however, most definitely affect many Standing Orders from the period of its adoption to September 9, 1988. This motion would clearly suspend:

- a) Standing Order 4 which provides for a parliamentary calendar;
- b) Paragraph 1 of Standing Order 9 would be suspended and the adjournment of the House on Mondays, Tuesdays and Thursdays would take place at 10 p.m.;
- c) Standing Order 66 relating to the adjournment debate or "Late Show" would also be suspended until September 9;
- d) Standing Order 10 which provides for an extended sitting motion would also be ineffective.

Those are the only Standing Orders that this motion proposes to suspend. Nevertheless, the motion provides that only Government Orders will be debated in sittings after 6 p.m.

However, other provisions for the daily business such as Statements by Members, Question Period, Routine Proceedings and Private Members' Business remain unaffected. In the opinion of the Chair, none of the traditional debating procedures would be curtailed and indeed more debating time is provided for.

The Chair will now address the first issue, that is, was it proper for the Government to give notice under Government Notices of Motions.

On June 7, 1988, the honourable Member for Kamloops—Shuswap argued that the item filed on the *Notice Paper* under the heading Government Notices of Motions dealing with the extension of the sittings of the House of Commons was incorrectly placed and that it should have appeared under the heading Motions. He pointed out that since 1955, all motions dealing with an extension of the sittings of the House have been filed under the heading Motions and not Government Notices of Motions. This, he stated, was because the issue dealt with the business of the House and not the business of the Government.

This issue poses several problems for the Chair. I should first underline that the Standing Orders of the House are silent on interpreting which items should appear under Motions and which items should appear under Government Notices of Motions. The Chair must give some consideration to what types of motions can be filed under these headings.

Can a distinction be made between those types of motions placed under Motions and those under Government Notices of Motions based solely upon their content? I would suggest it cannot.

For example, in this current session, there are eight instances where the House made decisions regarding the Standing Orders under Motions by unanimous consent. However, on June 3, 1987, when the Provisional Standing Orders were further amended and made permanent, arguably the most significant decision on the Standing Orders made this session, this was accomplished after two days' debate on a motion which was called under Government Business. On June 2, the opposition Parties registered their dissatisfaction that the Government chose to proceed unilaterally with amending the rules, but no procedural objection was made to the fact that this was done under Government Orders and not Motions.

These instances reveal the fact that the Standing Orders have often been and perhaps usually are amended under Motions. However, the Government has also proceeded under Government Orders.

The question then becomes, what is the distinction between a Government Notice of Motion and a motion? I would suggest a Government Notice of Motion is any motion that the Government gives notice of. In other words, a Government Notice of Motion is not based on the content of the motion, but rather upon the mover. In many cases, therefore, a notice of motion could go under more than one heading and it is up to the Minister giving notice to decide which heading should be chosen. Clearly a Government Notice of Motion can only be moved by the Government, but the Government can choose to place it either under Motions or under Government Notices of Motions.

This concept is borne out in a ruling on May 16, 1985, by Speaker Bosley. He was called upon to rule on whether a time allocation motion had to be moved under Motions during Routine Proceedings or whether it could be placed under Government Notices of Motions and then transferred to Government Orders.<sup>4</sup>

His decision was that it could be proceeded with in either way and that the choice was up to the Minister moving it.

The Standing Orders do not define what is to be in a motion or notice of motion from the Government. In view of Speaker Bosley's decision, which I have already quoted, I must therefore say that when there is no distinction, the Minister may choose under what heading he wishes to place his motion. I am, however, unable to support the honourable Member for Kamloops—Shuswap who says that this motion was entered in the wrong place in the *Order Paper*.

The second question to be addressed is: Can the Government initiate a motion to suspend the provisions of the Standing Orders?

In order to answer that question, we should initially look to the Canadian authorities.

First, the current Canadian House of Commons Standing Orders in Section 56, paragraph (1), subparagraph (o) have at least envisaged the concept of the suspension of the rules. That subparagraph declares that motions for the suspension of the Standing Orders are debatable motions. There is no specific direction as to how such motions are to be decided but such a motion is clearly subject to the provisions relating to notice, debate and amendment.

Second, Citation 21 of *Beauchesne* Fifth Edition refers to the rules of procedure generally:

The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them. A few rules are laid down in the *British North America Act*, but the vast majority are resolutions of the House which may be added to, amended, or replaced at the discretion of the House. It follows, therefore, that the House may dispense with the application of any of these rules by unanimous consent on any occasion, or, by motion, may suspend their operation for a specified length of time.

Citation 9 of *Beauchesne* Fifth Edition gives further precision by stating:

All rules are passed by the House by a simple majority and are altered, added to or removed in the same way ....

*Beauchesne* Fourth Edition amplifies more specifically on the Standing Orders by stating in Citation 10:

Standing Orders may be suspended for a particular case without prejudice to their continued validity, for the House possesses the inherent power to destroy the self-imposed barriers and fetters of its own regulations. It may even pass an order prescribing a course of procedure inconsistent with the Standing Orders. A motion for such temporary suspension requires notice ... but in urgent cases the notice can be waived.... Any alteration in the regular procedure may be made effective by force of a simple resolution. This is one of the characteristics of British procedure and it has contributed in no small degree to the elasticity of our parliamentary system.

Furthermore, there are several precedents of such occurrences in the Canadian House found in the *Journals* for March 16, 1883, June 1, 1898, April 8, 1948, April 24, 1961, and May 14, 1964.<sup>5</sup> Clearly then both the authorities and our practices allow for our Standing Orders to be suspended or amended by motion on notice.

The Speaker was urged by many Members to rule on this matter by using Standing Order 1 and referring to traditional parliamentary practice in other jurisdictions, if applicable.

The honourable Parliamentary Secretary to the Government House Leader (Mr. Jim Hawkes) has already referred to the British practice, and the citation on page 212 of *May Twentieth* Edition is worthy of repetition:

Standing Orders are not safeguarded by any special procedure against amendment, repeal or suspension, whether explicitly or by an Order contrary to their purport. Ordinary notice only is requisite for the necessary motion; and some Standing Orders have included arrangements for the suspension of their own provisions by a bare vote, without amendment or debate.

The Chair has also looked to the Australian practice as commented on by J.A. Pettifer in *House of Representatives Practice*. It is clear the Australian House does deal with such motions on a regular basis. Its Standing Orders specifically provide for the suspension of a Standing Order on notice. Such motions are debatable, amendable and require only the majority of votes cast to be adopted. The Chair is reluctant to use this practice as a convincing authority because it is supported in Australia by a specific Standing Order. Reference to the Australian practice does, however, demonstrate that suspension of the Standing Orders is not foreign to other Houses in the Commonwealth.

Therefore, in answer to the second question, the Chair is bound by the Canadian practice on the precedents cited earlier, and I must rule that the Government is acting within the rules when it files notice of a motion to suspend certain Standing Orders, and such motions pursuant to Standing Order 56 (1) are debatable, amendable, and votable.

I should now like to address the next question: Does such a motion require the unanimous consent of the House or a simple majority decision?

There is no doubt in anyone's mind that the House can amend or suspend its rules by unanimous consent. That is a given.

A review of our present Standing Orders reveals that they are, unlike those in the Australian House, totally silent on the manner of suspension. The practice reported by the *Journals of the House* reveals at least one specific case which was challenged and was ruled on by the Speaker. On March 16, 1883 the Chair "decided that it was perfectly competent on notice having been duly given, as in the present case, for the majority of the House to suspend the rule". I refer to *Journals*, page 128 for March 16, 1883.

I am conscious of the fact that some Members may feel that particular ruling may be "dated", but I would argue it is a very important one. It is one thing to find a series of precedents where the House did something and to demonstrate thereby evidence of an established practice, but a proceeding supported by a Speaker's decision must stand as firm guidance to future chair occupants unless the rules specifically relating to that subject are altered or events subsequent to it change its nature. I have been unable to find any other guidance or event that would alter my view of that ruling by Speaker Kirkpatrick in 1883. I must, therefore, rule that a motion, duly before the House, to suspend a Standing Order requires a simple majority decision by the House.

I will now address the last question: Has the recent parliamentary reform changed our practice fundamentally and rendered prior precedents inapplicable?

The honourable Members for Winnipeg—Birds Hill, for Saint-Jacques, for Saint-Denis, and for Notre-Dame-de-Grâce—Lachine East (Mr. Warren Allmand) have all eloquently argued that the Government motion would undo years of difficult negotiations by two special committees. The honourable Member for Kamloops—Shuswap has claimed that “we are at a crossroads”. With respect to the calendar, the Lefebvre Committee in its third report, which was concurred in by the House, stated in part:

Your committee is of the opinion that a parliamentary session should be planned on the basis of three annual sitting periods which should ensure a reasonable certainty as to the dates and duration of the periods during which the House would sit.

Consequently, the calendar was inserted into Standing Order 4. The honourable Member for Calgary West has indicated that the House has sat during two of those summer adjournments. These sittings, however, were the result of an application to the Speaker under the terms of Standing Order 5 and not as a result of a motion similar to the one presently on the *Order Paper*.

As some Members have suggested, the Speaker must take into account not only the letter of the rules but also their spirit. In addition, as I have said before in previous rulings, the Chair should also rely on that most basic rule of all, that of common sense.

To those honourable Members who have asked me to reject the Government’s motion on the basis that it is the “tyranny of the majority”, I should like to point to them the possible consequences of accepting their advice.

If a Speaker rules that the Standing Orders could only be suspended or changed by the unanimous consent of the House, the situation could arise where the House would be in jeopardy of becoming procedurally the hostage of a single Member. Indeed, one Member, and one Member alone, could prevent any future procedural reform by withholding his or her consent. For example, one Member could prevent the House from adjourning in the month of May even if all other 281 Members preferred to adjourn prior to June 30.

The unique flexibility of the British parliamentary system, a flexibility which has allowed for adaptations to an infinite variety of circumstances, would be jeopardized. Clearly that is undesirable.

The Chair, however, is very supportive of the parliamentary calendar as brought forward by the Lefebvre Committee. I believe it has been responsible for bringing order to our proceedings and has encouraged and fostered negotiation and compromise between the Parties in the days leading up to the automatic adjournments. Without that co-operation and constant negotiation and

compromise, our system of government ceases to operate smoothly. If the Chair were to support the view that only consent can modify the calendar, I would be establishing a precedent that would not only refute our practice and precedents to date but would make further reform almost unachievable and it would certainly be far more difficult to achieve the kinds of hallmark amendments brought forward in 1982 and 1985. The motion of the honourable Minister of State (Hon. Doug Lewis) was therefore properly before the House.

I want to add one thing. There is an old saying that I may have referred to before, that hard cases make bad law. There was in this case a very natural temptation for the Speaker to try to find some way to uphold the continuance of the calendar. I have to advise regretfully those who argued so strenuously for that course of action, that I think that would have been a case of hard cases making bad law and I had to come down on the side of where I think the procedural law stands. As a consequence, it is accordingly my duty to propose the question.

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1. *Debates*, June 6, 1988, p. 16139.
2. *Debates*, June 7, 1988, pp. 16217-22.
3. *Debates*, June 9, 1988, pp. 16292-305 and June 10, 1988, pp. 16319-25.
4. *Debates*, May 16, 1985, pp. 4821-2.
5. *Journals*, March 16, 1883, p. 128; June 1, 1898, p. 292; April 8, 1948, pp. 326-7; April 24, 1961, pp. 467-8; and May 14, 1964, pp. 321-2.

## THE DECISION-MAKING PROCESS

### Motions and amendments

Motion: Government motion to suspend various provisions of the Standing Orders; admissibility

December 15, 1988

*Debates*, pp. 76-8

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*Context: On December 14, 1988, the Hon. Herb Gray (Windsor West) rose on a point of order regarding the admissibility of a Government motion to suspend the application of various provisions of the Standing Orders regarding days and times of sittings, the adjournment proceedings and the committee stage of public bills. He argued that the motion was out of order because it ran counter to the recent reform of the Standing Orders by extending hours of sitting, adding sitting days to the fixed parliamentary calendar and providing for consideration of all bills in Committee of the Whole rather than in legislative committee. Mr. Gray maintained that there was potential for abuse of the majority's power, in that the motion applied to all public bills and could be in effect for the duration of the session. Other Members also took part in the discussion.<sup>1</sup> On December 15, 1988, the Speaker returned to the House to present a ruling which also dealt with another point of order. Passages related to Mr. Gray's point of order are reproduced below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** Honourable Members will recall that yesterday afternoon I entertained extensive argument with respect to the motion standing under Government Order No. 1 for today. There were two important issues raised in that argument, and I am now ready to rule on those issues.

When Orders of the Day were called yesterday, December 14, 1988, the honourable Minister of State (Hon. Doug Lewis) proposed to move the motion standing on the Order Paper as Government Business No. 1. This motion, if allowed to be moved, debated and agreed to by the House, would have the effect of suspending various Standing Orders. Those Standing Orders relate to the hours and days of sitting, the adjournment proceedings, and the committee stage of public bills.

Both the honourable Member for Windsor West and the honourable Member for Kamloops (Mr. Nelson Riis) rose on points of order at that stage to object to the motion being moved, arguing that it was procedurally unacceptable. They and other honourable Members stated that the motion should not be allowed because it would contravene the recent reform to the Standing Orders by extending the hours of sitting and adding sitting days to the recently established fixed calendar. They also put forward the argument that this motion, by providing

for all Bills to be dealt with in Committee of the Whole rather than in legislative committee, would also go against recent reforms and would prevent the hearing of witnesses at the committee stage.

The point was also made that because this motion related to all public Bills and could be in effect for the duration of this session, it was a potential abuse of the power of the majority....

Overnight and this morning I have considered most carefully the arguments raised and have consulted various precedents and authorities, and I am now ready to rule.

Let me begin by addressing various points raised on the procedural acceptability of the motion. The honourable Member for Windsor West, in his remarks on his point of order, referred to a ruling I made in the 33rd Parliament on June 13, 1988, which can be found in *Hansard* for that date at page 16376.<sup>2</sup> For the benefit of those Members who were not with us then and those who follow our proceedings, I hope the House will bear with me as I quote what I feel is the essence of that ruling. The main question before the Chair at that time was: Can the Government initiate a motion to suspend the provisions of the Standing Orders? What I said was as follows:

"In order to answer that question, we should initially look to the Canadian authorities.

First, the current Canadian House of Commons Standing Orders in number 56, paragraph (1), subparagraph (o) [now Standing Order 67(1)(o)] have at least envisaged the concept of the suspension of the rules. That subparagraph declares that motions for the suspension of the Standing Orders are debatable motions. There is no specific direction as to how such motions are to be decided but such a motion is clearly subject to the provisions relating to notice, debate and amendment.

Second, Citation 21 of *Beauchesne* Fifth Edition refers to the rules of procedure generally:

The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them. A few rules are laid down in the *British North America Act*, but the vast majority are resolutions of the House which may be added to, amended, or repealed at the discretion of the House. It follows, therefore, that the House may dispense with the application of any of these rules by unanimous consent on any occasion, or, by motion, may suspend their operation for a specified length of time.

Citation 9 of *Beauchesne* Fifth Edition gives further precision by stating:

All rules are passed by the House by a simple majority and are altered, added to, or removed in the same way....

*Beauchesne* Fourth Edition amplifies more specifically on the Standing Orders by stating in Citation 10:

Standing Orders may be suspended for a particular case without prejudice to their continued validity, for the House possesses the inherent power to destroy the self-imposed barriers and fetters of its own regulations. It may even pass an order prescribing a course of procedure inconsistent with the Standing Orders. A motion for such temporary suspension requires notice ... but in urgent cases the notice can be waived.... Any alteration in the regular procedure may be made effective by force of a simple resolution. This is one of the characteristics of British procedure and it has contributed in no small degree to the elasticity of our parliamentary system.

Furthermore, there are several precedents of such occurrences in the Canadian House found in the *Journals* for March 16, 1883, June 1, 1898, April 8, 1948, April 24, 1961, and May 14, 1964. Clearly then both the authorities and our practices allow for our Standing Orders to be suspended or amended by motion on notice.

The Speaker was urged by many Members to rule on this matter by using Standing Order 1 and referring to traditional parliamentary practice in other jurisdictions, if applicable.... The citation on page 212 of *May Twentieth* Edition is worthy of repetition:

Standing Orders are not safeguarded by any special procedure against amendment, repeal or suspension, whether explicitly or by an Order contrary to their purport. Ordinary notice only is requisite for the necessary motion; and some Standing Orders have included arrangements for the suspension of their own provisions by a bare vote, without amendment or debate.

The Chair has also looked to the Australian practice as commented on by J. A. Pettifer in *House of Representatives Practice*. It is clear the Australian House does deal with such motions on a regular basis. Their Standing Orders specifically provide for the suspension of a Standing Order on notice. Such motions are debatable, amendable and require only the majority of votes cast to be adopted. The Chair is reluctant to use this practice as a convincing authority because it is supported in Australia by a specific Standing Order. Reference to the Australian practice does, however, demonstrate that suspension of the Standing Orders is not foreign to other Houses in the Commonwealth."

That is the end of the extract from my earlier judgement. I should now address the two major new objections of the honourable Member for Windsor West.

The honourable Member is, of course, absolutely right in saying that the motion differs because it suspends Standing Order 78 which relates to legislative committees. The June [13] motion also suspended Standing Order 10, now renumbered 27(1), which denied the right of any Member to move a motion relating to extended hours. In my view, both motions did indeed suspend the calendar but they also suspended other Standing Orders.

As far as his argument that the proposal now before us is a permanent change, I must tell the honourable Member that I cannot agree. The motion, if passed, would alter the Standing Orders for the duration of the First Session only. The duration is finite in keeping with Citation 21 of *Beauchesne* Fifth Edition and the motion does provide for an earlier expiry on motion of a Minister of the Crown after the First Royal Assent of the Bill.

The concept of studying legislation in Committee of the Whole House is certainly not foreign to our practice. Since the reform of 1968, after which most Bills were referred to standing committees, the *Journals* abound with Bills reviewed in Committee of the Whole. Since the creation of legislative committees, the House has often waived the Standing Orders and often resorted to the Committee of the Whole for expediting business. The difference between most of those examples and today is that the House proceeded by consent rather than by motion. However, as I stated earlier, both methods for reaching such decisions are valid and stand on their own, whether achieved by unanimous consent or by a majority decision.

The honourable Member for Kamloops did refer to and agree with my June comments that any other ruling would render the House hostage to a single Member if the House was required to proceed only by unanimous consent. He went on to claim, however, that this manoeuvre by the Government was an abuse and usurped the rights of the minority. I have some difficulty in reconciling these two positions.

On the one hand he concedes the danger of tyranny by a minority, but he does object at least in this case to the role of the majority. Both the minority and the majority have rights; however, primacy cannot be given to both.

Having carefully reviewed the arguments of the honourable Member for Windsor West and the honourable Member for Kamloops, as well as those of the honourable Minister of State, I must advise the House that I am not persuaded that the motion on the *Order Paper* is fundamentally different from the June proposal. It is therefore in order.

I said last June that sometimes hard cases make bad law. This is another hard case. I am not pleased as your presiding officer to put this question to the House; but it would be bad law to do otherwise. I said just a few days ago that I am your servant. I cannot rewrite or reinterpret the rules at the behest of the majority or the minority. I have, however, a duty that the minority be protected and heard....

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1. *Debates*, December 14, 1988, pp. 65-74.
2. This decision is considered in the present chapter.

## THE DECISION-MAKING PROCESS

### Motions and amendments

Motion: Government motion urging a legislature to take a certain action; encroachment on an area of provincial jurisdiction; admissibility

June 19, 1990

*Debates*, pp. 12965-7

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**Context:** On June 19, 1990, Mr. Nelson Riis (Kamloops) rose on a point of order to ask the Speaker to rule on the admissibility of a Government motion urging the legislatures of Manitoba and Newfoundland to ratify the Meech Lake Accord. In Mr. Riis' opinion, the motion was out of order because it encroached on an area of jurisdiction exclusive to the legislatures of the provinces in question. Other Members also intervened on the matter.<sup>1</sup> The Speaker ruled immediately on the admissibility of the Government notice of motion. His decision is reproduced in extenso below.

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Kamloops has raised a matter of interest.

So that all honourable Members can fully understand what is placed in front of the Chair, I draw their attention to the *Order Paper and Notice Paper* wherein the government has indicated by notice of motion placed on the *Order Paper* ..., although it has not been called for debate yet, a resolution relating to the constitutional accord and the results of the discussions of a week or so ago.

I will not read the whole preamble, but I will read the substantive part, which is the basis of the complaint brought to us by the honourable Member for Kamloops. It reads:

... the House ...

That is, this House of Commons.

... urges the Manitoba and Newfoundland Legislative Assemblies to exert efforts to bring about full ratification of the *Constitution Amendment*....

The honourable Member has said that this ought to be ruled out of order because, in one way or another, it seems to trespass into the realm, the area, or the jurisdiction of another legislative assembly within the Canadian Confederation, within our federal system.

First of all, he has put forward to the Chair one citation of *Erskine May* and another, I think, in *Beauchesne* Fifth Edition, if my memory is serving me correct.

I would point out to begin with that if we try to take *Erskine May* or even *Beauchesne*, if it is referring back into British practice, we are dealing there with comments which involve the appropriateness of the British House of Commons debating what is a subject matter of debate in the House of Lords.

What is being asked for here by the government, although as I say the government may not even call it, but that is not for me to say, is that this House urges the Manitoba and Newfoundland legislative assemblies to do something.

The question is whether or not that is an inappropriate trespass into the jurisdiction of another legislature.

It is not the first time this has happened and I draw attention to the motion in 1984 which, if memory serves me correctly, was urged upon the government of the day by Members. It related to a matter which was divisive in the nation and in the province of Manitoba. I quote the motion.

It is true, as the honourable Member has pointed out, that it was done by unanimous consent. That is of interest but I do not think that it is a matter that takes away from this precedent. I quote: "The House urges the government of Manitoba to persist in its efforts to fulfil the constitutional obligations of the province and protect effectively the rights of its French-speaking minority".

It goes on: "The House urges the legislative assembly of Manitoba to consider such resolution and legislation in an urgent manner so as to ensure they finally pass it."<sup>2</sup>

We are not a unitary state as is the United Kingdom. We are a federal state. Under the *British North America Act*, which brought in our constitutional position in 1867, property and civil rights and a number of matters were given to the provinces and other matters were retained by the House of Commons and the Parliament of Canada.

So it is absolutely true, as the honourable Member points out, that within the provincial legislatures there are a number of matters that are the exclusive jurisdiction of the provincial legislatures across the country and of course that has to be respected.

The issue here is whether a motion like this is a trespass into the debate of another legislature. The motion relates to something which is absolutely fundamental to the whole nation and is just as important at the provincial level as at the federal level because it concerns the amendment of the Constitution of our country. It is not something that is exclusively related to the jurisdiction of a provincial government.

Even if it was, and I point out that distinction, what is being asked for here is nothing more or less than an expression of this federal House on a matter of great national interest in which it says:

... the House urges the Manitoba and Newfoundland Legislative Assemblies to exert efforts to bring about full ratification of the *Constitution Amendment*...

It is not for me to say what reaction there may be in the province of Newfoundland and Labrador and the province of Manitoba if the House decided to do this, but I have to say on a procedural basis that it is very hard to be persuaded that that is some kind of a jurisdictional trespass into the appropriate workings of a provincial legislature.

As I say, this is a national issue. If the House of Commons chooses to express itself on a matter of national import—and it has in the past done so—I would think that it would be inappropriate for me to rule that it cannot do so.

I also want to bring to Members' attention the debate of 1987 to which the honourable parliamentary secretary (Mr. Albert Cooper) referred, in which there was a motion from the New Democratic Party debated on an opposition allotted day which stated: "That this House calls upon the Government of British Columbia to co-operate in setting aside the South Moresby area of the Queen Charlotte Islands as a National Park Reserve". It goes on.

That particular motion was debated in this House. Some honourable Members will remember there was such unanimity within the Chamber on it that long before the day that had been allotted for the full debate was over, at the suggestion of the then honourable Member for Winnipeg—Birds Hill (Mr. Bill Blaikie) and the then Minister of the Environment for the Government of Canada (Hon. Tom McMillan), the motion was put to the House at that point and the motion was passed.<sup>3</sup> Debate then continued, but it was a unique and unusual day; there is no question about that.

I must say that that motion did have an effect outside this Chamber. It had an effect in terms of the province of British Columbia, the province from which I come. Of course there was an effect.

Again, what the House did here was call upon the Government of British Columbia "to co-operate in setting aside". One could say that that did not call upon the legislative assembly. Perhaps not, but it is a very direct plea from this House to a legislative assembly in a province to do something.

I think I have to take the position that it is not an invasion into the jurisdiction of another legislature. There is a difference here which probably distinguishes the case from those set out in *Beauchesne* or in *Erskine May* because this is a federal state, not a unitary state.

Third, it has clearly been done before not just once in a while but quite often. Some Members who have been here for some time will remember that it has been customary. It has happened again and again that Members have risen in the House and urged the government of the day, whatever government it might have

been, to make a public statement on matters of great national importance, and invited the government of the day to put motions to this House in order to make such a statement.

The honourable Member for Kamloops raises a point which causes me concern, and that is that this process, if abused, may very well cause some difficulties and some resentment in some places. That is of course a political question, not a procedural one, and it is not for me to rule on that, but I have listened carefully to the point.

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1. *Debates*, June 19, 1990, pp. 12963-5.
2. *Journals*, February 24, 1984, p. 214.
3. *Journals*, May 14, 1987, pp. 916-8.

## THE DECISION-MAKING PROCESS

### Motions and amendments

Motion: Government motion to amend various provisions of the Standing Orders; division requested for the purpose of debate and voting

April 10, 1991

*Debates*, pp. 19312-3

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*Context:* On April 8, 1991, during consideration of the motion to amend the Standing Orders of the House of Commons (Government Business No. 30), Mr. Chris Axworthy (Saskatoon—Clark's Crossing) rose on a point of order to ask the Speaker to divide Motion No. 30 into five separate motions, so that each one could be debated and amended separately before being put to a vote. He argued that Motion No. 30 was unique in that it did not arise from a matter under consideration in committee, where interested parties could have made their concerns heard, and asserted that it would be impossible to amend the motion to the point where Members would be able to express their position clearly by speaking to a number of amendments, because the Government did not intend to allow a lengthy debate. The Hon. Harvie Andre (Minister of State and Government House Leader) argued that the amendments to the times of sittings and to various provisions dealing with the manner in which legislation is dealt with could not be divided because they were linked. He did however concede that certain divisions were possible, in particular with respect to the proposals involving committees. Other Members also took part in the discussion.<sup>1</sup> The Deputy Speaker (Hon. Andrée Champagne) took the matter under advisement. The Speaker returned to the House on April 10, 1991, and delivered his ruling which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Monday, April 8, 1991, the honourable Member for Saskatoon—Clark's Crossing rose on a point of order concerning Government Motion No. 30, the motion dealing with the proposed changes to the Standing Orders of the House.

The honourable Member argued cogently that this motion contains many distinct propositions. He then went on to ask the Chair “to divide Motion No. 30 into five distinct motions and to permit each to be debated, amended and voted on separately”.

The honourable Government House Leader, the honourable Member for Kamloops (Mr. Nelson Riis) and the honourable Member for Calgary West (Mr. Jim Hawkes) contributed to the brief discussion that ensued. The Chair took the matter under advisement and undertook to return to the House as soon as possible. I am now prepared to rule on the matter.

Government Motion No. 30 now being debated consists of 64 separate proposals, as well as paragraphs relating to its coming into force. I have carefully considered the motion and the arguments put forward by honourable Members. I have equally carefully reviewed the weight of precedent and practice with regard to the Chair's discretionary power in such a situation.

Although it is clear that the Speaker has the authority to divide complicated questions, it is equally true that this power has only very rarely been exercised. In this situation, I have been guided by the cautionary note sounded by Speaker Lamoureux in his ruling of March 23, 1966:

It is only in exceptional circumstances and when there is little doubt about it that the Speaker can intervene and, of his own initiative, amend the resolution proposed by an honourable Member.<sup>2</sup>

Therefore, after serious reflection, I undertook discussions with the leadership of the three parties. Following those consultations, I wish to inform the House that the Chair proposed to deal with Government Motion No. 30 in this manner. All proposals will be debated together but they will be voted upon in three groupings, those groupings being: proposals relating to private members' business, namely those numbered 38 through 45 and 60 through 64; proposals relating to committees, namely those numbered 46 through 59; and all other proposals, namely those numbered 1 through 37, as well as those separate un-numbered paragraphs relating to the terms and conditions of the coming into force of the motion.

With regard to the amendment of the honourable House Leader of the Official Opposition (Mr. David Dingwall), a division on that question will precede the divisions on the groupings I have just outlined.

In summary, then, there will be a single debate on Motion No. 30 and the House will vote on the motion in the following manner: (1) a vote on the amendment of the Member for Cape Breton—East Richmond (Mr. Dingwall), (2) a vote on the proposals relating to Private Members' Business, (3) a vote on the proposals relating to committees, (4) a vote on all other proposals including the paragraphs relating to the coming into force of the motion.

I wish to express my sincere appreciation to all honourable Members for their contribution to the Chair's consideration of this question. Your co-operation does great credit to this place and obviously obviates the necessity of the Chair to make unilateral interventions that might be of some difficulty in terms of precedents to both sides at some later date. I thank honourable Members.

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1. *Debates*, April 8, 1991, pp. 19129-32.

2. *Debates*, March 23, 1966, p. 3083.

## THE DECISION-MAKING PROCESS

Motions and amendments

Amendment: addition of a new element

December 17, 1987

*Debates*, pp. 11882-3

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**Context:** *On December 15, 1987, the House proceeded to the consideration of a Government motion endorsing the Free Trade Agreement between Canada and the United States as being in the national interest (Government Motion No. 20). The Hon. Lloyd Axworthy (Winnipeg—Fort Garry) then moved an amendment to specify that the national interest would “be determined by the people of Canada in a general election.” The Acting Speaker (Hon. Steven Paproski) took the proposed amendment under consideration.*<sup>1</sup>

*Later in the course of the sitting, the Speaker informed the House that he was having difficulties with the amendment moved by the Official Opposition and invited interested Members to put forward their arguments. Mr. Axworthy argued that the amendment was designed to clarify the words “as being in the national interest”, by requiring that the matter be submitted to the determination of the Canadian people in a general election. The Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)), replying on behalf of the Government, argued that the amendment not only introduced a new element into the motion but also made the main motion unintelligible. Other Members also took part in the discussion.<sup>2</sup> On December 17, 1987, the Speaker delivered his decision which is reproduced in extenso below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** Wednesday during our proceedings on the motion standing in the name of the honourable Minister for International Trade (Miss Pat Carney) in relation to the endorsement of the Free Trade Agreement with the United States, the honourable Member for Winnipeg—Fort Garry moved the following amendment:

That the motion be amended by inserting immediately after the comma following the word “interest” the following: “as determined by the people of Canada in a general election”.

It is at this point that I wish to thank all honourable Members who took part in the procedural discussion on Wednesday afternoon for their assistance in helping the Chair arrive at a decision.

This amendment has given the Chair very real concern. The motion itself asks the House to endorse the Canada-U.S. free trade agreement as being in the national interest of the country. Some honourable Members would argue that the amendment seeks to clarify the words “as being in the national interest” by adding the requirement that this should be decided by the Canadian population in a

general election. Other honourable Members argued that the amendment was attempting to introduce a new element to the main motion, an element not contemplated when it was moved and as such would enlarge upon the scope of the motion. Further, the argument was made that the amendment was vague and therefore, if passed, would leave the House wondering what it had decided because of the inherent imprecision in the amendment.

This kind of motion, as our precedents demonstrate, is not easy to amend, and it might be desirable for the Chair to be as liberal as possible. However, by their own admission, the Members who spoke for the Official Opposition stated that the intent of the amendment was to link the definition of the national interest to the outcome of the next general election. As such the amendment would clearly render a part of the main motion subject to the results of a future general election beyond the dissolution of this House and this Parliament.

I should point out at this time that on many occasions in the past honourable Members have tried to introduce amendments to resolutions of this type and found it extremely difficult to draft one that would be acceptable to the Chair.

There is an excellent ruling in this regard delivered by [Deputy Speaker] Lamoureux on Thursday, June 4, 1964 and I should like to quote:

The difficulty, of course, is that if an amendment proposes nothing new it is a nullity and if it does introduce a new proposition not covered in the motion it becomes irrelevant.

Further on in the same ruling can be found this passage, and here again I am quoting:

Furthermore, the Chair agrees with the suggestion made in the course of argument this afternoon that one cannot propose an amendment which does not oppose or alter the main motion but attempts to approve of it on a conditional basis.<sup>3</sup>

Assuming that the amendment and the motion were accepted, we would have the endorsement, by the House, of the trade agreement subject to a further endorsement by the population at the next general election and, in my humble opinion, this is foreign to the main question.

Let me quote a further ruling by Speaker Lamoureux of May 6, 1966 when the House was asked to approve the agreement between Canada and the United States concerning automotive products and an amendment was proposed requiring the future consent of Parliament for any amendments to or renewals of that agreement. Mr. Speaker Lamoureux said:

I suggest that the proper procedure to achieve this aim is not by way of amendment to the resolution but rather by way of substantive motion, with due notice. I agree with the contention ... that this amendment is in fact a new proposition.<sup>4</sup>

Further, to quote Mr. Speaker Michener from June 11, 1958 commenting on a proposed amendment to a motion for approval of the NORAD agreement, he said the following:

If the amendment has the effect of denying the motion it is unnecessary and irrelevant because those Members who wish to disapprove the agreement have only to vote against the motion as it stands.

If the amendment adds something to the motion in a positive way it is a declaration of principle in these terms.... Assuming that the amendment and the motion were accepted you would have the agreement approved but you would have added to it a declaration of this independent principle which is not related to the motion nor is it necessary for the decision of the motion in question.

And further on, Mr. Speaker Michener comments:

... a motion clearly could be brought forward for the purposes of this amendment but it would have to be on notice and as an independent motion.<sup>5</sup>

In summary, I feel that the amendment proposed by the honourable Member for Winnipeg—Fort Garry is similar in many ways to those dealt with previously by Speakers Lamoureux and Michener. The condition of requiring the national interest to be determined by means of a general election is a new proposition which would have to be put forward as an independent motion on notice.

Therefore, under the circumstances, and with regret, I have no alternative but to declare that the amendment cannot be proposed to the House.

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1. *Debates*, December 15, 1987, p. 11802.
2. *Debates*, December 15, 1987, pp. 11817-24.
3. *Debates*, June 4, 1964, p. 3955.
4. *Debates*, May 6, 1966, p. 4795.
5. *Debates*, June 11, 1958, p. 1054.

## THE DECISION-MAKING PROCESS

### Motions and amendments

**Amendment:** notice sent by fax; deadline set down in the Standing Orders; signature of a Member

February 15, 1993

*Debates*, pp. 15899-900

**Context:** On February 12, 1993, Mr. Don Boudria (Glengarry—Prescott—Russell) rose on a point of order to inform the Chair that Mr. Mac Harb (Ottawa Centre) had faxed to the Journals Branch the previous day a report stage motion in amendment to a bill, which had arrived before the six o'clock p.m. deadline, but had been deemed inadmissible because it was not an original copy signed by the Member. Mr. Boudria argued that refusing to accept documents sent by fax would do nothing at all to help the House function more efficiently. Other Members took part in the discussion.<sup>1</sup> The Deputy Speaker (Hon. Andrée Champagne) asked the Clerk to check the time at which the notice had been received at the Journals Branch, as well as the nature of the notice, and then took the matter under advisement. The Speaker returned to the House on February 15, 1993, and delivered his ruling which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** Last Friday, February 12, 1993, the honourable Member for Glengarry—Prescott—Russell raised a point of order concerning the notice of a report stage motion for Bill C-76, *An Act to amend certain statutes to implement certain fiscal provisions of the budget tabled in Parliament on February 25, 1992*, which he stated had been sent by fax by the honourable Member for Ottawa Centre to the Journals Branch prior to the close of the notice period of 6 p.m. on Thursday, February 11. The Deputy Speaker took the matter under consideration and promised to return to the House at the earliest possible opportunity.

The Chair has now had the opportunity to look into the matter. The Member raised two issues in his point of order. First, he stated that the motion had been sent prior to the 6 p.m. closing, and second, he argued that an original signed copy of the document should not be necessary and that a signed notice received by fax should be acceptable.

After carefully reviewing the events, I have determined that the motion submitted in the name of the honourable Member for Ottawa Centre was received by fax at the Journals Branch at 6:02 p.m. on Thursday, February 11, as clearly indicated on the fax copy itself.

The Member's office was immediately notified that the motions were received after 6 p.m. and that an original signature was required and therefore on two counts was not receivable. In addition, the Member's office was also advised

that there was some question as to the form of the motions themselves. However, based solely on the late receipt, there is no doubt that the motions did not meet the requirements of the Standing Orders for notice.

There is a long-standing tradition of this House that original signatures by a Member are required for all notices and the advent of new technology has not altered this practice. This practice has existed in order to protect Members from any unauthorized use of their names.

The House may wish to consider through appropriate channels whether it wishes to amend this practice to meet the demands of new technology. Meanwhile the current practice must prevail and all notices submitted for the *Notice Paper* and received by fax, which members know are really photocopies, are accepted as advance notice and cannot be considered official unless supported by the Member's original signature on the document in question and which must be received shortly thereafter.

*In response to this decision, Mr. Boudria asked the Speaker to rule on whether the original copy signed by the Member also had to be received by the Journals Branch before the deadline set down in the Standing Orders. The Speaker clarified his decision, as reproduced in extenso below.*

**Mr. Speaker:** I thank the honourable Member. I regret that this confusion has existed. I hope that it will not exist any further. I am very pleased to make it very clear to all honourable Members that unless we change the rules, the signed copy must be received prior to the close-off time.

It means that in practice, if honourable Members wish to notify the Table early by a fax, it is probably helpful. However, in order to come in within the prescribed time under the rules it will be necessary for a signed copy to be there by six o'clock.

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1. *Debates*, February 12, 1993, pp. 15827-8.

## THE DECISION-MAKING PROCESS

Motions and amendments

Subamendment: scope of the amendment

January 16, 1991

*Debates*, pp. 17124-5

**Context:** On January 15, 1991, during Government Orders, Mr. Bill Blaikie (Winnipeg Transcona) moved a subamendment to the motion dealing with the Persian Gulf crisis (Government Business No. 27). The subamendment modified the amendment by introducing new ideas such as the promotion of democracy in the region, the establishment of a mechanism to reduce the arms trade, the elimination of weapons of mass destruction and the convening of an international peace conference. The Acting Speaker (Mr. Charles DeBlois) took the subamendment under advisement.<sup>1</sup> The following day, the Speaker returned to the House to deliver his decision which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** Last night, during the course of the debate on the motion of the honourable Secretary of State for External Affairs (Rt. Hon. Joe Clark), and on the amendment of the honourable Leader of the Opposition (Hon. Jean Chrétien), the honourable Member for Winnipeg Transcona proposed to move an amendment to the amendment. The text of that amendment reads:

That the amendment be amended by deleting all the words after the word "sanctions" and substituting the following:

"such support to exclude the involvement by Canada in a military attack on Iraq or Iraqi forces in Kuwait and to encompass diplomatic initiatives including settlement of border and other disputes through UN mediation or the International Court of Justice, promotion of democratization throughout the region, establishment of a mechanism to reduce the arms trade and to eliminate weapons of mass destruction, and the convening of an international peace conference to discuss all outstanding Middle East issues."

The Chair took the proposed subamendment under advisement, and I am now prepared to rule on the matter.

*Beauchesne* Fourth Edition, Citation 202, paragraph (3) states clearly:

Since the purpose of a subamendment is to alter the amendment, it should not enlarge upon the scope of the amendment ... if it is intended to bring up matters foreign to the amendment, the Member should wait until the amendment is disposed of and move a new amendment.

Furthermore, *Beauchesne* Fifth Edition further clarifies the concept of a subamendment at Citation 438, paragraph (2), which states:

A subamendment must attempt to explain the substance of the amendment and may not substitute an entirely new proposal.

Another important criterion is explained at citation 441(2): A subamendment must be relevant to the amendment it purports to amend and not to the main motion.

The amendment, now before the House, proposed by the honourable Leader of the Opposition reads as follows:

That the motion be amended by adding immediately after the word "Kuwait" the following:

"through the continued use of economic sanctions, such support to exclude offensive military action by Canada at this time."

The amendment to that amendment which the honourable Member for Winnipeg Transcona proposed to move goes far beyond the terms of that motion. It introduces a variety of entirely new concepts, for example, the notion of democratization in the area, the elimination of weapons of mass destruction, and the idea of an international peace conference.

While these concepts are perhaps germane to the very complex issue being debated, nonetheless, from a procedural perspective, they stand well beyond the terms of what could be considered an acceptable amendment.

Accordingly, the Chair must find that the proposed subamendment is not in order and cannot be proposed.

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1. *Debates*, January 15, 1991, p. 17080.

## THE DECISION-MAKING PROCESS

### Motions and Amendments

Motions: statutory order; notice of motion *ultra vires*; Speaker does not rule on legal matters

December 8, 1992

*Debates*, pp. 14863-4

**Context:** *On occasion, Parliament has passed legislation which contains provisions requiring the House of Commons and/or the Senate to initiate a debate should some mechanism contained in the statute be triggered. These debates are said to be held pursuant to a statutory order. On December 3, 1992, the Order Paper and Notice Paper contained such a Statutory Order for consideration of a motion in the names of the Members of the Liberal Party caucus and made pursuant to subsection 7(2) of the Special Economic Measures Act, Statutes of Canada, 1992, Chapter 17. The motion proposed to amend the Special Economic Measures (Haiti) Ships Regulations which had been tabled in the House on September 8, 1992.<sup>1</sup> The proposed amendment would add a new section to the Regulations requiring the Government of Canada to “urge every member of the Organization of the American States and the United Nations that has adopted measures similar to those set out in the Regulations to implement and enforce those measures.”<sup>2</sup>*

*Pursuant to subsection 7(3) of the Act, the motion would be considered no later than Thursday, December 10, 1992, and, pursuant to subsection 7(4) of the same Act, it would be debated, without interruption, no longer than three hours unless a longer period were fixed by the House by unanimous consent. At the expiry of the time provided for debate, all questions necessary to dispose of the motion would be put forthwith.<sup>3</sup>*

*Before the commencement of Government Orders on December 8, 1992, Mr. David Dingwall (Cape Breton—East Richmond) rose on a point of order to ask Mr. Jim Edwards (Parliamentary Secretary to the Government House Leader) to indicate when the Government would be proceeding with debate on the Statutory Order appearing on that day's Order Paper. In reply, Mr. Edwards stated that the proposed amendment was *ultra vires* the statute. He argued that motions under section 7 of the Act were allowed only in relation to orders and regulations made under section 4 of the Act which did not deal with the relationship between Canada and countries other than the states subject to sanctions. For this reason, he suggested that the proposed amendment appeared to be beyond the scope of the regulation-making power.*

*The Speaker intervened and advised the House that it was not the appropriate moment to raise the matter. He urged the Parliamentary Secretary and opposition leaders to discuss the matter and then to advise him as quickly as possible as to when they wished to argue whether the motion was properly before the House so that he could set aside time for the discussion.<sup>4</sup>*

*Following Question Period, Mr. Dingwall rose in the House to request the Chair's guidance in determining the procedural acceptability of the Statutory Order. He argued that it was not the role of the Speaker to decide on the constitutionality or the substance of the Statutory Order, only whether the notice was properly given and how the House must proceed to dispose of the matter. Mr. Edwards countered that the Liberal amendment went beyond the scope of the Special Economic Measures (Haiti) Ships Regulations which only authorize the Government to draft regulations dealing with relations between Canada and a sanctioned state, not to commit the country to a particular position on matters of foreign policy concerning third party states. He further argued that if the Speaker were to allow debate on the matter, he would be implicitly giving a legal opinion that the amendment fell within the scope of the Act.<sup>5</sup>*

*The Speaker ruled immediately. The full text of the ruling is provided below.*

### **DECISION OF THE CHAIR**

**Mr. Speaker:** I thank both the honourable Member for Cape Breton—East Richmond and the honourable Parliamentary Secretary.

I am going to remove the Chair from the position in which the Chair finds itself by reminding honourable Members that the Speaker has traditionally never been granted the authority to rule on whether or not a bill introduced into the House of Commons or an amendment introduced into the House of Commons is *ultra vires*. That is a matter for the courts. As a consequence, I must stay with that position.

I listened carefully to the honourable Parliamentary Secretary who I think with some ingenuity was suggesting that if I ruled otherwise I was implicitly supporting an amendment which might or might not be *ultra vires*. I certainly respect the honourable Parliamentary Secretary's ingenuity in putting it that way.

However, I think I must remain with the long tradition which has been supported by many rulings that it is not the place of the Chair to rule on whether or not a bill or as I said earlier, an amendment to a bill, is *ultra vires* or otherwise.

I would point out that if I were to rule otherwise we could be in the position where any bill that the Government introduces could be challenged by the opposition or by members of the Government as to whether or not it is *ultra vires* and that would put the Speaker really in the position of the court and beyond the jurisdiction that was ever envisaged for the Speaker.

The consequence of that is that we are in a position where a motion has been filed. We are bound by a statute which says: "Where a motion for the consideration of a House of Parliament is filed in accordance with subsection 2, that House"—in this case that is this House—"shall not later than the sixth sitting day of that House following the filing of the motion take up and consider the motion unless a motion of the like effect has earlier been taken up and is being considered in the other House", which is not the case.

That is the position we are in. It is up to the House to decide what it is going to do between now and the expiry of the six days which is mentioned in the Bill. We are, of course, bound by that.

I think that is the best I can do to assist the House at this time on this matter.

*Postscript: Debate on the Statutory Order took place later that day. The motion was negatived on division.<sup>6</sup>*

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1. *Journals*, September 8, 1992, p. 1938.
2. *Order Paper and Notice Paper*, December 3, 1992, pp. 15 and XI.
3. *Order Paper and Notice Paper*, December 3, 1992, pp. 15 and XI.
4. *Debates*, December 8, 1992, pp. 14808-9.
5. *Debates*, December 8, 1992, pp. 14862-3.
6. *Debates*, December 8, 1992, pp. 14873-82.

## THE DECISION-MAKING PROCESS

### Divisions

Recorded divisions: length of bells; extension of time for calling Members to vote; role of Whips

September 15, 1987

*Debates*, pp. 8958-9

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**Context:** *On September 1, 1987, Mr. Nelson Riis (Kamloops—Shuswap) rose on a point of order to seek the guidance of the Chair about a matter which had occurred the previous day. On August 31 at 6:00 o'clock p.m., the House had proceeded to the taking of deferred divisions on a motion concerning certain amendments made by the Senate to Bill C-22, An Act to amend the Patent Act and provide for certain matters in relation thereto, and on the superseding motion: "That the question be now put." As this was a deferred division, pursuant to the Standing Orders the bells calling in the Members were to be sounded for not more than 15 minutes. Mr. Riis noted that the bells had been rung well beyond the 15 minutes stipulated, before the Whips had entered the Chamber, and suggested that the delay went against the rules and practices of the House. He asked the Speaker to address the issue. Other Members then commented. The Speaker noted the seriousness of the incident but also pointed out the need for flexibility, stating: "I do want to reiterate that there is a tradition in this place that sometimes the Chair is guided by the disposition of the Whips. That is a tradition which we may well not want to abolish completely." He indicated he would return to the House on this matter.*<sup>1</sup>

*On September 15, 1987, the Speaker returned to the House with a statement reproduced in extenso below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** On September 1, 1987, the honourable Member for Kamloops—Shuswap raised a point of order relating to the circumstances surrounding the taking of a deferred division at six o'clock p.m. on August 31, specifically his concern that the bells had rung for longer than the 15-minute period provided for under the terms of Standing Order 13(5) under which the division was being taken. He spoke of the disruption to "orderly business" when Members expecting a division at a given time were made to wait beyond the appointed hour.

The Chair welcomes the honourable Member's timely intervention on this important matter and wishes to thank other honourable Members who offered their views on the same point.

The honourable Member for Saint-Jacques (Mr. Jacques Guilbault) referred to the provisions of the Standing Order which specifically states that the bells must be rung for 15 minutes at the most. He also mentioned the time-honoured tradition of the Whips' simultaneous entrance into the House to indicate that honourable Members are ready to vote.

The honourable Minister of State for the Treasury Board (Hon. Doug Lewis) pointed out that "this is one of the rules of the House which works both ways at various times", and that this flexibility was not, in his view, being abused by the opposition Parties, or by the Government.

The honourable Member for Bourassa (Mr. Carlo Rossi) referred to the informal agreement which governs the Whips' entrance.

The honourable Member for Winnipeg—Birds Hill (Mr. Bill Blaikie) reminded the House of the extensive scrutiny which the Special Committee on Reform of the House had given to division bells.

The Chair thanks all honourable Members for their contribution to this question.

The concept of divisions lies at the very heart of the work of any deliberative assembly. Here in this place, the process whereby the House decides the questions before it has, at various times, been the focus of considerable attention by honourable Members. Our procedure is, of course, laid down in the Standing Orders, but this codification is mitigated by the practice which has grown up over time. Thus, there is the time-honoured convention whereby the entrance of the Government and Opposition Whips to the Chamber signals to the Chair they are ready for the division to be taken.

This convention is nowhere codified, but it is regularly invoked, and its judicious use provides a practical mechanism for taking into account unexpected circumstances affecting one side or another and for allowing *ad hoc* arrangements to be made by the Whips in coping with these exigencies. The sort of accommodation this tradition permits represents the best traditions of this place in extending courtesies from one Party to another. There is always, however, the danger that in so doing we stray too far beyond the parameters of the rules. This is clearly what happened on August 31 where a 15-minute bell rang for 30 minutes before the Whips entered and the division was called.

A review of the recorded divisions in the second session of this Parliament provides a revealing and, I believe, reassuring glimpse of our current practice. Of 148 designated division bells—that is, bells to be rung for no more than 15 or 30 minutes in accordance with the Standing Orders—60 per cent were rung precisely for the designated time, while the time ran over in some 40 per cent of the cases. It is important to note, however, that in the great majority of these overruns—52 out of 59 instances—the extra time taken was less than five minutes and, in the seven worst cases, the longest overrun was 11 minutes on a 30-minute bell. These figures offer compelling evidence of the good faith of honourable Members and testify to the even-handedness that has guided the Parties and their Whips in responsibly exercising the flexibility afforded them by convention.

The division on August 31 represents, in the light of these figures, an egregious example. The Chair realizes that, even in this instance, the Whips' decision to delay their entrance was made in a spirit of generosity and courtesy and that there was no intention to thwart the spirit of the Standing Orders. But even if the August 31 incident is an anomaly, and the evidence suggests that it is, the Chair shares with honourable Members profound misgivings about the direction that such an incident might eventually portend. Since the circumstances of this particular instance are devoid of controversy, it is perhaps an opportune time to step back and examine the larger dilemma that the Chair faces with regard to division bells.

While reviewing precedents in this respect, the Chair examined a similar case which occurred on November 2, 1982 when the 15-minute bell actually lasted for 33 minutes. Responding to a point of order, the Chair referred to the agreement between Whips and stated that it felt bound by it and would act accordingly.<sup>2</sup>

By contrast, the McGrath Committee's third report, in discussing the stringent time limitations that electronic voting would impose, took the opposite view, stating:

Some may feel that this limiting of time for voting removes flexibility from the House. Your Committee is of the opinion that the House of Commons can no longer enjoy the luxury of waiting for a few Members to arrive for a vote.<sup>3</sup>

These conflicting approaches neatly summarize two options: rigid adherence to the letter of the Standing Orders versus unflagging support for the Whips' convention. In the opinion of the Chair, under current circumstances and with prevailing attitudes, either option is extreme and each carries with it its own perils.

On the one hand, strict adherence to the terms of the Standing Orders constrains the Whips from exercising their judgment and accommodating circumstances on a case-by-case basis. On the other hand, the surrender of the matter entirely to the Whips' convention potentially leaves the House thrall to the political climate of the moment, and to the possibility of questions not being decided expeditiously.

The Chair accepts the responsibility for ensuring the orderly conduct of House business, but would be reluctant independently to invoke the letter of the Standing Orders when it appears that the House, in its wisdom, has chosen to give itself some leeway. At the same time, as I said on September 1, I deeply regret the incident on August 31. It does seem to me that we cannot permit ourselves to stray so far beyond the bounds of the Standing Orders without incurring grave risks. If the House should choose to direct the Chair to enforce strict adherence to the designated times for division bells, then we would proceed accordingly. But the Chair is reluctant to intervene unilaterally to set aside the Whips' convention which, on balance, has served honourable Members well. With the continued

co-operation of all Parties and the continued vigilance of all honourable Members, the Chair is convinced that the House can maintain the delicate balance which fully respects the spirit of the Standing Orders with regard to designated times for division bells without doing violence to the Whips' traditional role.

Having said that, I think that the intervention led by the honourable Member for Kamloops—Shuswap was a serious one and, under the circumstances, was very much warranted. The Chair will be diligent to ensure that no honourable Member will feel the necessity to raise the matter again. I thank all honourable Members.

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1. *Debates*, September 1, 1987, pp. 8640-3.
2. Recorded division on the motion for second reading of Bill C-128, *Supplementary Borrowing Authority Act, 1982-83 (No. 2)*. *Debates*, November 2, 1982, pp. 20332-4.
3. See page 120 of the Third Report of the Special Committee on the Reform of the House of Commons tabled in the House on June 18, 1985, *Journals*, p. 839.

## THE DECISION-MAKING PROCESS

### Divisions

Recorded divisions: abstention; brief explanatory statement

June 22, 1988

*Debates*, p. 16729

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**Context:** *On June 22, 1988, following a recorded division on a motion to amend the Constitution, Mr. Svend Robinson (Burnaby—Kingsway) rose on a point of order to explain briefly his reasons for abstaining. As Members were rising to contest the Member's right to do so, the Speaker made the following statement which is reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** There is a tradition in this place according to which [a] Member who has abstained may rise briefly to give an explanation. I would ask honourable Members to extend that courtesy.

## THE DECISION-MAKING PROCESS

### Divisions

Recorded divisions: length of bells; “maximum” length of time for calling Members to a vote; television digital clock; interpretation of Standing Order relating to division bells; role of Whips

January 30, 1990

*Debates*, p. 7615

March 20, 1990

*Debates*, p. 9513

**Context:** On January 30, 1990, during debate on the motion for second reading of Bill C-62, respecting the Goods and Services Tax, the superseding motion “That an honourable Member be now heard” was moved. When the question was put, a recorded division was demanded and the division bells began to ring. The Government and Official Opposition Whips approached the Chair, and a recorded division took place shortly thereafter.<sup>1</sup>

Later that day, immediately following Question Period, Mr. Jim Fulton (Skeena) rose on a point of order to question the legitimacy of the vote taken earlier in the day. Upon first hearing the division bells, he had noted that the digital clock visible on the television broadcast of proceedings had indicated some 29 minutes remained before the vote was to take place. Shortly thereafter the bells stopped and the voting procedure began. While offering some suggestions on how the digital display could be modified to ensure Members were aware of the exact proceedings taking place with respect to divisions, Mr. Fulton contended that at present Members who were in committee or elsewhere determined when to come to the House based on the digital clock display. He thus felt his privileges and that of other Members had been infringed upon that day by the “misleading” nature of the digital clock display.<sup>2</sup>

Members from all three parties commented on the matter of the length of the bells calling Members to a vote, the digital clock, and other issues involved with the taking of this division.<sup>3</sup> Although the Speaker did not return to the House to rule directly on Mr. Fulton’s point of order, he addressed some preliminary remarks on January 30, 1990 on the issues raised, and addressed some additional remarks on the length of the bells and the interpretation of the relevant Standing Order as part of a ruling on a separate point of order delivered on March 20, 1990. The full text of the Speaker’s remarks on January 30 and a relevant extract from his ruling of March 20, 1990 are reproduced below.<sup>4</sup>

## DECISION OF THE CHAIR

*On January 30, 1990:*

**Mr. Speaker:** I think perhaps it might be helpful to Members and to the public to understand exactly what has taken place here.

The honourable Member for Skeena has risen and explained to the Chair that watching the television set, which is available in the offices of all honourable Members, he noticed a vote was about to take place. There is for the convenience of Members a digital clock that appears on the face of the television set. It is there for convenience only. I am prepared to certainly consider what might be done in order to make sure that no honourable Member is misled by what the television screen shows.

However, I want to explain to honourable Members and to the public, that when the bells ring, in most cases unless there has been some arrangement otherwise, they are either what is called a 15-minute bell or a 30-minute bell. There is also a long convention in this place that if the two Whips walk back in the Chamber and take their seats earlier than either 15 minutes or 30 minutes, then we are bound to proceed with the vote. Now that is a rule of the House and it is an old and long-time tradition.

The only thing that I am concerned about at the moment has nothing to do with why the bells rang. If honourable Members are interested in why the bells rang or if members of political science classes or the public want to know why the bells rang, they can look at Hansard and see that a motion was moved. Upon that motion being moved, and it has been moved many times by all parties in this place upon occasion, there is a vote called.

It is not for me in listening to this point of order to comment whatsoever on the tactics used, the whys or the wherefores of it. What I am applying my mind to is solely the question of television coverage, and once the vote is called, that is end of the coverage of the Chamber. All we have is the ticking clock. Perhaps the solution might be to have television coverage of the Chamber. Honourable Members could see Whips come in. However, that is not for me to say.

I will look at the question of the clock. I have some indication that Members other than those of the party of the honourable Member for Skeena may have also found themselves in some difficulty today. But that is the sole issue and I want it clearly understood. I will see if something can be done to convenience Members, but I point out the reason the clock is there is a matter of convenience only.

*On March 20, 1990:*

**Mr. Speaker:** Another issue relating to the bells was raised by the honourable Member for Nickel Belt (Mr. John Rodriguez) on January 30, 1990. He asked whether a 15-minute bell or a 30-minute bell is not required to sound for the full time provided in the Standing Order. In other words, he maintains that a 15-minute bell must ring for a full 15 minutes and a 30-minute bell for the full 30 minutes. With respect to this point, I should bring to the House's attention the wording of Standing Order 45. The relevant words are found in subsections (3) and (4). They are “—the bells to call in the Members shall be sounded for not more than fifteen minutes” or “—for not more than thirty minutes.”

The important words appear to be, “for not more than”, which would indicate that the bells can be sounded for any period of time which does not exceed the time mentioned in the Standing Order. It implies, however, that the time for the bells to ring may be less than the total stipulated. Thus, the process followed in the circumstances complained of was proper....

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1. *Debates*, January 30, 1990, p. 7598.
2. *Debates*, January 30, 1990, p. 7614.
3. *Debates*, January 30, 1990, pp. 7614-7.
4. *Debates*, January 30, 1990, pp. 7615-6; March 20, 1990, p. 9513. Please note that the extract of March 20, 1990 was from a Speaker's ruling on points of order raised by Mr. David Barrett (Esquimalt—Juan de Fuca) and Mr. Jean-Robert Gauthier (Ottawa—Vanier) concerning committees continuing to sit while division bells were ringing. This decision is included in Chapter 9.

## THE DECISION-MAKING PROCESS

### Divisions

Recorded divisions: Members who allegedly voted twice; use of dilatory tactics

February 12, 1990

*Debates*, pp. 8187-8

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**Context:** *On January 24, 1990, following a recorded division on the motion for first reading and printing of Bill C-281 regarding Magna Carta Day, Mr. Jim Hawkes (Calgary West) rose on a point of order to object that Mr. Les Benjamin (Regina—Lumsden) had stood to vote twice, once in the affirmative and once in the negative. Mr. Benjamin rose to admit that he had started to rise when the “yeas” were called but had not bowed to the Speaker as custom required. Other Members also intervened on the matter.<sup>1</sup>*

*Later on in the course of the sitting, Mr. Hawkes again rose on a point of order to object that Mr. Howard McCurdy (Windsor—St. Clair) had voted twice on a motion to introduce a bill regarding low-rental housing projects. When the Acting Speaker (Hon. Steven Paproski) asked Mr. McCurdy to clarify whether he had voted for or against the bill, he replied that he had voted against it. Other Members took part in the discussion.<sup>2</sup>*

*On January 25, 1990, Mr. Hawkes raised a question of privilege regarding the two Members accused of having voted twice during a recorded division. Mr. Hawkes argued that there could be no more serious instance of contempt of Parliament, and indicated his intention of bringing an accusation so that the House or one of its committees could investigate the behaviour of the two Members. Mr. Nelson Riis (Kamloops) argued that the official record was perfectly clear on which way the votes had gone. Mr. Bill Blaikie (Winnipeg Transcona) maintained that Mr. Hawkes was defaming Members who had simply made use of dilatory tactics. Other Members also intervened on the matter.<sup>3</sup> The Speaker took the question under consideration.*

*On January 26, 1990, Mr. McCurdy rose on a question of privilege to apologize for any misunderstanding his actions on January 24 might quite unintentionally have caused.<sup>4</sup> On February 12, 1990, the Speaker handed down his decision, which is reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** I wish to bring to the attention of the House a ruling on a question which honourable Members will remember was raised by the honourable Member for Calgary West on Wednesday, January 24, following several recorded divisions that day. Put simply, there was the suggestion that some honourable Members may have voted twice.

Subsequently, these incidents were raised by the honourable Member for Calgary West. The honourable Member claimed, as a question of privilege, that contrary to the established rules and practices of this House, two members voted twice on those divisions. This charge was denied by the Members involved, both on Wednesday when the issue was first raised, and again on Thursday.

The issue was extensively discussed last Thursday and I wish to thank all honourable Members who made presentations.

On Friday, the honourable Member for Windsor—St. Clair offered an apology to the House for any unintended misunderstandings caused by his actions during the divisions in question. This apology closes the matter in so far as the question of privilege is concerned.

However, as Speaker, I want to make a few comments on the events that took place. It is accepted practice that when the House is considering an item of government policy that is highly contentious, Members of the opposition will seek to use any means available to them to delay the proceedings. As we have witnessed over the years the ingenuity of the opposition to find ways to delay the business of government is considerable. Such dilatory tactics, are of course, an important part of the adversarial nature of this place and a legitimate tool for the opposition. At the same time, however, I must point out that any such tactics by the opposition must fall squarely within the rules or practices of the House and I would ask all honourable Members to keep this in mind.

At no time should dilatory tactics ever detract from the authority or the dignity of the House. In the heat of the moment, Members may sometimes depart from the normal courtesies, but the basic respect for our practices must be insisted upon. The Chair would be derelict in its duties to all honourable Members and to this institution if it were to tolerate any erosion of that respect.

Therefore, I urge Members on all sides of the House to consider their behaviour carefully, and most especially, in the heat of partisan debate in order that we may preserve and protect the dignity and respect due to this Chamber in which we have all been called to serve.

I thank honourable Members for their interventions.

**Postscript:** Following the changes to the Standing Orders adopted in May of 1991, motions for leave to introduce a bill, for its first reading and printing are deemed carried without debate, amendment or question put.

1. *Debates*, January 24, 1990, pp. 7438-40.
2. *Debates*, January 24, 1990, p. 7441.
3. *Debates*, January 25, 1990, pp. 7473-80.
4. *Debates*, January 26, 1990, p. 7495.

## THE DECISION-MAKING PROCESS

### Divisions

Recorded divisions: guidelines; Members to remain in their places during division

April 9, 1990

*Debates*, p. 10390

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**Context:** *On April 9, 1990, during a series of votes on the report stage motions in amendment to Bill C-62, respecting the Goods and Services Tax, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order to object to the fact that Members were moving about the House during the votes contrary to long-standing tradition. The Speaker ruled at once.*

## DECISION OF THE CHAIR

**Mr. Speaker:** *Beauchesne's Parliamentary Rules and Forms*, Fifth Edition, Citation 223, paragraph 2, states very clearly:

A Member must be in his own seat should he wish to vote and should remain in his seat until the division is complete and the result announced.

I point out that that is a long-standing rule. There is no question about it. It is not for the Chair to intervene unless a point of order has been called. A point of order has been called. There is a reason for the rule. We are in a series of votes, but even if it was only one vote, the rule is to avoid confusion and to add to the efficacy of a democratic vote in this Chamber. I would ask all honourable Members to co-operate.

## THE DECISION-MAKING PROCESS

### Divisions

Recorded divisions: practice of “pairing”; entry in the *Votes and Proceedings*; authority of the Chair re “pairing”; broken pair

June 11, 1992

*Debates*, p. 11789

**Context:** Following Question Period on June 5, 1992, Mr. Alex Kindy (Calgary Northeast) rose on a point of order to seek clarification from the Chair concerning the entry in the *Votes and Proceedings* of the recorded divisions held on June 3, 1992. Mr. Kindy noted that the list of paired Members accompanying Division No. 150 contained the name of a deceased Member and that names appearing on the list of paired Members also appeared on the list of Members voting which ran counter to the purpose of pairing.<sup>1</sup> The Speaker replied that on June 4, the Acting Speaker (Mr. Charles DeBlois) had informed Members that, because of major computer problems, the printed lists did not reflect accurately the notes given to the Clerk during the taking of votes of June 3, and that a revised version of the *Votes and Proceedings* and the *Debates* would be reprinted and distributed.<sup>2</sup> The Speaker said that he would consider Mr. Kindy’s intervention and report to the House if necessary. On June 11, 1992, the Speaker gave his ruling which is reproduced *in extenso* below.

### DECISION OF THE CHAIR

**Mr. Speaker:** Before proceeding to the daily routine of business, I want to give my ruling on a matter raised by the honourable Member for Calgary Northeast a few days ago.

As all honourable Members know, there were some technical difficulties with the *Votes and Proceedings* of Wednesday, June 3, 1992 in recording the divisions on motions of amendment at report stage of Bill C-81, *An Act to provide for referendums on the Constitution of Canada*. A reprint was immediately ordered to accurately reflect the results recorded by the Clerk.

In his point of order, the honourable Member for Calgary Northeast was concerned by the fact that some of the names appearing under the listing for paired Members also appeared under the “yeas” or “nays”.

It would appear therefore that some Members whose names were paired with others, indicating that they would not be voting, had in fact cast votes either for or against certain motions.

Should or could action be taken by either the Speaker or the House in regard to this situation.

Standing Order 44.1 specifically deals with paired Members. It explains that a register of paired Members is kept at the Table, “in which any Member of the Government party and any Member of an opposition party may have their names entered together by their respective Whips, to indicate that they will not take part in any recorded division”; independent Members sign in their own right.

The names of these paired Members are inscribed immediately following the list of “yeas” and “nays” for each recorded division.

However, the Standing Orders are completely silent on the question of a broken pair; there is no penalty provided for, nor any corrective action suggested. As the 21st Edition of *Erskine May* explains on page 350:

The Speaker has ruled that agreements to pair are private arrangements between Members and in no sense matters in which either he or the House can intervene.

Although Westminster’s rules relating to pairing are different from those employed in Canada, the basic principle enunciated in *May* holds true for our practice, that is to say: a pairing agreement is a private arrangement in which neither the House nor the Speaker can intervene, according to the Standing Orders as now written.

Any change to our current practice would require amendments to our Standing Orders. The Standing Committee on House Management which has as part of its permanent mandate the power to review and report on the Standing Orders, procedure and practice in the House, may wish to look into this question. I thank the honourable Member for Calgary Northeast for bringing this matter to the attention of the House.

*Postscript:* The Standing Committee on House Management did take up the matter of pairing as the Speaker had suggested. In its Eighty-First Report,<sup>3</sup> presented in the House on April 1, 1993, the Committee made two recommendations with regard to pairing. These read as follows:

22. *Pairing should be used more often. Provision should also be made to allow Members to sign the Register of Paired Members in their own right without requiring the approval of the Whips.*
23. *If a Member who has personally signed the Register of Paired Members for a particular day, time or vote casts any vote in the House on that day, time or vote, the vote or votes shall be disallowed.*

*This Report was never concurred in by the House.*

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1. *Debates*, June 5, 1992, p. 11473.
2. *Debates*, June 4, 1992, pp. 11381-2.
3. *Minutes of Proceedings and Evidence of the Standing Committee on House Management*, April 1, 1993, Issue No. 53, p. 35.

## THE DECISION-MAKING PROCESS

### Unanimous consent

Alleged abuse pointed out; withdrawal of a Government Order and ensuing amendments

October 22, 1990

*Debates*, pp. 14509-10

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**Context:** *On October 18, 1990, the House completed the debate on Government Motion No. 16 (invasion of Kuwait by Iraq) as well as the amendment and subamendment pertaining to it. Pursuant to an order made earlier that day, the recorded divisions were deferred to October 23, 1990.<sup>1</sup> On October 19, 1990, Mr. Albert Cooper (Parliamentary Secretary to the Government House Leader) obtained unanimous consent for the withdrawal of the Government motion, as well as the amendment and the subamendment, so that a new resolution could be introduced, and to apply the order of Thursday, October 18, 1990, regarding deferred recorded division.<sup>2</sup>*

*On Monday, October 22, 1990, Mr. Marcel Prud'homme (Saint-Denis) rose on a point of order to object to the decision taken the preceding Friday. Mr. Prud'homme argued that this was an abuse of parliamentary process, since the Members would be called upon to vote on a motion different from the one they had debated. Other Members also intervened on the matter.<sup>3</sup> The Speaker ruled immediately. His decision is reproduced in full below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Saint-Denis, who is one of the most senior Members here, has risen on a matter and is supported by the honourable Member for Burnaby—Kingsway (Mr. Svend Robinson) on [a] matter which I think is very serious indeed. I think it is serious because debate took place on a motion, the vote was deferred and honourable Members expected to be voting on the motion that was debated. For reasons that we do not need to go into, by consent, the motion was changed. That means that honourable Members will go to vote on a different motion than that which was debated. I very much regret this.

The honourable Member for Saint-Denis has said that an abuse of Parliament by consent is just as much an abuse. We are at a time when the country is watching this institution very closely. Much of what the country sees, it is not happy with. All of us are going to have to make a much greater effort to give an example that is in keeping with the great tradition of this place, in keeping with the history of it, and in keeping with what I think most of us want this place to be in the hearts and minds of Canadians.

The honourable Member for Burnaby—Kingsway has stated correctly that the House can by consent do what it wishes. The reason that that is so is because ultimately this is the place where the people of Canada have sent all of us to do

what we think is in the best interest of the country. If the House agrees and there is consent, then no matter what other rules we may have or whatever customs we may have, we can abridge those to do what the whole House consents to do.

There may have been, and there may well be, sound reasons under the circumstances where it was felt by some that it may have been in the national interest to change the motion. I do not want to get into that side of the debate. What I have to say to honourable Members is that, in my view, what happened was improper and an abuse. I am not in a position to change it, but I view it as a very serious matter. However, I want Members to know, and I want the public to know, that it was done by consent and we are now all bound by it. I would hope that not again for a long, long time, if ever, would honourable Members, such as the honourable Member for Saint-Denis, the honourable Member for Burnaby—Kingsway, or others have to rise to complain about an event which, while procedurally proper because of the consent, in my opinion, ought not to have happened.

***Postscript:** On October 23, 1990, immediately after the prayers, the Speaker stated that his comments regarding the point of order raised by Mr. Prud'homme meant no reflection whatsoever on the House or the House leadership. He admitted that he probably went further than a Speaker should and reminded Members that the House can do by consent what it wishes to do.<sup>4</sup>*

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1. *Journals*, October 18, 1990, pp. 2132-3.
2. *Journals*, October 19, 1990, p. 2138.
3. *Debates*, October 22, 1990, pp. 14507-9.
4. *Debates*, October 23, 1990, p. 14553.

## THE DECISION-MAKING PROCESS

### Unanimous consent

Amendment to the Standing Orders, allowing a Minister to move a “motion upon Routine Proceedings” if unanimous consent is refused, found to be acceptable

April 9, 1991

*Debates*, pp. 19233-7

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**Context:** *On March 26, 1991, before the reading of Government Motion No. 30 amending the Standing Orders, Mr. Nelson Riis (Kamloops) rose on a point of order to ask the Chair to rule that the motion before the House was wholly or in part out of order. The Speaker interrupted the Member to inform him that he would hear his point of order after the motion had been read.*<sup>1</sup>

*Later on in the course of the sitting, Mr. Riis rose on a point of order to argue that paragraph 20 of the motion would add a standing order allowing a Minister of the Crown to evade a refusal to give unanimous consent. He argued that this proposed standing order numbered 56.1 would infringe Members' rights in that it established two categories of Member: those who, as Ministers of the Crown, could obtain unanimous consent unless at least 25 Members objected, and ordinary private Members, for whom unanimous consent meant no objections at all. He added that adopting this proposal would mean a qualitative and substantial change in Members' privileges and a consequent reduction in the authority of the House to debate proposals brought before it by Ministers of the Crown and to decide on them. The Hon. Harvie Andre (Minister of State and Government House Leader) reminded Mr. Riis that paragraph 20 applied only to motions “made upon Routine Proceedings”, which are strictly limited in scope, and that such motions could only be moved during Routine Proceedings, when all Members of the House are normally present. The Speaker indicated that he was prepared to hear other viewpoints on this question at an appropriate time.*<sup>2</sup>

*On April 8, during consideration of Government Orders, Mr. Riis asked the Chair to indicate when it would be prepared to respond to the arguments presented on March 26 regarding the admissibility of the Government's proposed amendments to the Standing Orders. The Deputy Speaker (Hon. Andrée Champagne) assured the Member that a response would be forthcoming as soon as possible.<sup>3</sup> The Speaker handed down his decision on April 9, 1991. The ruling also dealt with supply proceedings, an issue which was also raised by Mr. Riis.<sup>4</sup> The excerpts regarding the admissibility of new Standing Order 56.1 are reproduced hereafter.*

### DECISION OF THE CHAIR

**Mr. Speaker:** On Tuesday, March 26, 1991, when Government Motion No. 30 to amend the Standing Orders was first before the House, the honourable Member for Kamloops rose on a point of order to ask the Chair to rule that certain aspects

of that motion were “in whole or in part improperly before the House” and “in whole or in part out of order.”

His focus of attention was on paragraph 30 which he characterized as proposing “to amend the right of the Commons to debate supply before it is granted to the Crown,” and on paragraph 20 which he said introduces “a new Standing Order which can override the failure of the Minister to obtain unanimous consent from the House.”...

I turn now to that aspect of the honourable Member’s point of order which dealt with proposed Standing Order 56.1. This would be a completely new addition to the rules of the House. It provides that if, at any time during a sitting of the House, unanimous consent is denied for the presentation of a routine motion, then a Minister of the Crown may request during Routine Proceedings that the Speaker put the motion. If 25 or more Members rise to oppose the motion, it shall be deemed withdrawn; otherwise it shall be deemed adopted.

The routine motions to which this new process applies are delineated in paragraph (b). They are those motions made upon Routine Proceedings, which may be required for the observance of the proprieties of the House; the maintenance of its authority; the management of its business; the arrangements of its proceedings; the establishing of the powers of its committees; the correctness of its records, or the fixing of its sitting days, or the times of its meeting or adjournment.

Accordingly, there is a very limited range of motions to which this proposed process can apply.

The honourable Member for Kamloops claims that the proposal would “override unanimous consent”. In his opinion, that clause “proposes to change our notion of unanimous consent and to enable the rules of procedure and operations of the House to be changed by an agent of the Crown unless 25 Members of the House object.” He also pointed out that the proposal would establish “two classes of Members, those who by virtue of being Ministers of the Crown can obtain unanimous consent as long as 25 Members do not object, and those ordinary Members for whom unanimous consent means no one objects”.

In considering the honourable Member’s claims, the Chair’s attention was drawn to the fact that there are precedents for the type of process suggested in the new proposal. Standing Order 26(2) deals with the conditions under which any Member may move to extend a sitting and sets at 15 the number of Members required to foreclose a move to extend the sitting. Similarly, Standing Order 53(4) provides for the suspension of certain Standing Orders to deal with a matter of an urgent nature. Only a Minister of the Crown can propose such a motion and if 10 Members rise the motion is deemed withdrawn; otherwise, the motion shall have been adopted. Similarly, Standing Order 98(3), which sets out the terms

under which an extension of sitting hours during report and third reading stages of a private Members' bill may be sought, also stipulates that if fewer than 20 Members support the motion to extend, the motion is deemed withdrawn.

There are certain similarities also between the proposal and existing Standing Order 78 respecting time allocation in that both use a ladder-like type of approach depending upon the extent of agreement forthcoming to securing the right to propose a motion.

Examples also abound in our Standing Orders of discrimination among types of Members. Ministers of the Crown have certain prerogatives that private Members do not; private Members may put questions to Ministers of the Crown during Question Period, but Ministers may not question private Members; party leaders are afforded certain recognitions denied to all other honourable Members; the government and opposition Whips have certain rights peculiar to them alone and finally, and perhaps most personally pertinent, the Speaker is denied the right to participate in a debate or to vote on any question before the House, except in the case of an equality of voices. So, the concept of affording differing powers to various groups or individuals is not foreign to our Standing Orders, and, while it may well be the subject of debate, is not reason enough on its own to cause the Chair to intervene on procedural grounds to prevent the proposal from being debated by the House.

During his intervention in the discussion of this point of order, the honourable Minister of State and Leader of the Government in the House of Commons emphasized that the type of motion envisaged in the proposed new rule could only be introduced during Routine Proceedings when this House is habitually full. He termed the 25-member requirement a significant and major inhibition to the abuse of the rule.

The honourable Member for Kamloops is quite correct in stating that proposed new Standing Order 56.1 would "override unanimous consent"—indeed, it is a condition precedent to putting the motion during Routine Proceedings that unanimous consent must have been previously denied. However, this "override" provision can operate, as the Chair understands it, only with respect to a certain very limited range of motions offered at a specific time in our daily agenda by a Minister of the Crown. What the Chair must decide is, is this proposal so offensive, does it challenge the authority of the House and impede Members in the performance of their duties to such an extent that it should not be allowed to be put to the House for debate and decision. Based on the fact that we have similar procedures existing with respect to other types of motions and given the very limited application of the new proposal, the Chair cannot accede to the request of the honourable Member for Kamloops that paragraph 20 of the motion respecting the Standing Order amendments be ruled out of order.

The Chair commends the honourable Member for Kamloops for bringing his concerns to the attention of the House and for the cogency and seriousness of his argument. The Chair does not take lightly any decision respecting the privileges of this Chamber or of an individual Member of it. It is only by constant vigilance that we can ensure the preservation of the privileges necessary to the carrying out of our responsibilities as elected representatives. In Citation 21 of *Beauchesne* Fifth Edition, it is stated:

The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them.

In coming to a decision on the point of order raised by the honourable Member for Kamloops, the Chair was very much aware that this House is about to embark upon an exercise of that fundamental privilege. In the view of the Chair, it would be incongruent to deprive this Chamber, by fiat from the Chair under the guise of protecting privilege, of the opportunity to fully explore the options available to the House in the exercise of its most basic privilege. The privilege which this House enjoys to set its own binding rules of procedure and to regulate its own internal affairs must be guarded just as jealously as the rights, immunities and privileges of individual Members of the House of Commons. When the two are in conflict, or apparent conflict, it should be the House and the Members thereof who resolve the difference.

Traditionally the House has accommodated concerns about the text of its current and proposed Standing Orders through the process of debate, amendment and clarification through agreement. Furthermore, the House and all honourable Members may seek to clarify, to modify and to interpret House rules and practices by recourse to points of order, questions of privilege and to the committee charged with the review of and report on the Standing Orders and procedures in the House and its committees.

So seriously does the House view its duty to review and to evaluate, to establish and revise its Standing Orders, that it has even designated by Standing Order 51 that they shall be automatically reviewed and debated at the beginning of the first session of every Parliament.

While the honourable Member does not have a point of order, he will have several future opportunities to propose changes to the Standing Orders.

Again, I emphasize that the argument raised by the honourable Member for Kamloops was obviously very carefully considered. The matters are important matters and I hope that he will be able to accept the basis of this ruling, which is that ultimately it is the House that must make up its mind as to the orders by which we are governed.

I thank the honourable Member.

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1. *Debates*, March 26, 1991, p. 19025.
2. *Debates*, March 26, 1991, pp. 19042-6.
3. *Debates*, April 8, 1991, pp. 19132-3.
4. This question is considered in the section regarding financial procedures.

## CHAPTER 5 — THE LEGISLATIVE PROCESS

### Introduction

One of the primary functions of Parliament, arguably its most important, is to enact and amend the laws which impact upon the functioning of government at the national and international levels and, indeed, upon many aspects of citizens' daily lives. Since the First Session of the First Parliament, both the Rules of the Senate and the Standing Orders of the House of Commons have contained provisions governing the passage of public and private bills. These written rules have been augmented by clearly established practices which have withstood the test of time and, taken together, have provided a framework for the passage of both routine and contentious legislation.

Speaker Fraser, due partly to his legal background, was conscious of the necessity to adhere to the usual parliamentary manner of proceeding and clearly recognized the necessity to operate within the boundaries of precedent where reasonable. At the same time, he continually demonstrated in his rulings the flexibility to adapt to new parliamentary realities, including new Standing Orders, when touching upon questions of process. Indeed, on a number of occasions, he chose to suspend the sitting of the House to briefly revisit some of the issues, before pronouncing definitively on specific procedural points. On one occasion, at the urging of the House Leaders, he agreed to render a decision one afternoon and to return the following day to state the full reasons for the decision.

During his term, a number of highly contentious bills were brought before the House. He was called upon to rule, among other matters, on intricate and minute aspects of the application of closure and time allocation to bills; on omnibus legislation; on routine housekeeping motions and on intricate Ways and Means motions; and on the selection and grouping of amendments at report stage. These key rulings form the basis for this chapter.

In some instances, his rulings were based on century-old precepts; in others, he relied on common sense and modern political and parliamentary realities. In all cases, however, he demonstrated an attention to detail and a concern for the points raised by the individual Members, and applied himself diligently to explaining to the Members and to the public the precise point on which his decision turned.

## THE LEGISLATIVE PROCESS

Reinstatement of bills from a previous session

May 28 and 29, 1991

*Debates*, pp. 702-3, 733-5

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**Context:** On May 28, 1991, Mr. David Dingwall (Cape Breton—East Richmond), rose on a point of order with respect to a Government motion to reinstate six bills from the previous session. Mr. Dingwall based his concerns on three points, that the motion included a provision for a bill which the House had previously reinstated by unanimous consent, that the motion consisted of "five completely separate and distinct legislative matters which do not lend themselves to being considered together" and that the motion was unacceptable as it sought to circumvent the normal legislative process. Mr. Dingwall argued that, as there was no precedent in the House to reinstate bills other than by unanimous consent, the motion ought to be refused. An extensive debate arose with various Members participating in the debate.<sup>1</sup> After private representations from all three House Leaders requesting that the Chair render its decision quickly and in order to expedite consideration of the motion, the Speaker rendered his ruling later that afternoon and returned to the House the following day to explain the full reasons behind his decision. Both statements are reprinted in their entirety below.

### DECISION OF THE CHAIR

On May 28, 1991:

**Mr. Speaker:** As honourable Members are aware, we have had a series of comments concerning a problem in the House. Unfortunately, it was impossible to produce a judgment with all the requisite reasons, but I acknowledge the urgent nature of the issue raised by honourable Members and the need for handing down a judgment this afternoon.

Consequently, I am now ready to render my decision.

A point of order was raised this morning relating to Government Business No. 1, which concerns the reinstatement of certain bills from the Second Session.

After hearing representations from several honourable Members, I took the matter under advisement and have been deliberating on the points raised, intending to render my decision tomorrow.

However, I have now received representations, as I have just said, on behalf of the three House Leaders requesting that the Chair render its decision this afternoon.

Accordingly, to accomodate this request, I will now render my decision. I will return later to explain the rationale behind it. I should say—and I think honourable Members can understand this—that I am trying to accomodate certain necessities and I would hope that it would not become the practice to give a judgment and file the reasons later.

The Chair, of course, knows full well the effects of prorogation on the business then before the House. The Chair must also acknowledge, however, that the notion of reinstatement of business in the subsequent session is well established in our practice.

While this has hitherto been done by unanimous consent, the Chair can find no compelling reason to preclude proceeding by way of notice of motion, nor am I persuaded to reject the motion outright.

The theme of the motion is the reinstatement of certain bills. While the six bills are all distinct, the purpose of the motion is clearly to reinstate the bills at various stages. Therefore, the Chair has decided not to divide the motion for the purpose of debate.

That being said, however, the Chair does have some difficulty in accepting the argument that a Member in casting a single vote, can adequately express his or her opinion on six distinct pieces of legislation.

Therefore, Government Motion No. 1 will be dealt with in the following manner. There will be a single debate and five separate questions will be put, namely on the reinstatement of Bill C-26, Bill C-58, Bill C-78, Bill C-82 and Bill C-85. No question will be put on Bill C-73 as this matter has already been disposed of by the House. The enabling final paragraph of the motion will, as appropriate, form part of each question put.

*On May 29, 1991:*

Yesterday morning a point of order was raised relating to Government Business No. 1 which concerns the reinstatement of certain bills from the Second Session. Yesterday afternoon, to accomodate a request from the three House leaders, I informed the House of the Chair's decision on the matter, undertaking to return to set in context that decision. I would like to do so briefly at this time.

I do not propose to restate the arguments which were presented yesterday but I would like to thank the honourable Member for Cape Breton—East Richmond, the honourable Member for Kamloops (Mr. Nelson Riis), the honourable Member for Kingston and the Islands (Mr. Peter Milliken), the honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier), the honourable Member for Annapolis Valley—Hants (Mr. Pat Nowlan), the honourable Member for Glengarry—Prescott—Russell (Mr. Don Boudria), the honourable Member for Nickel Belt (Mr. John Rodriguez) and the honourable Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper).

Before looking at the terms of the motion itself, two concepts must be examined: the concept of prorogation and its effects, and the notion of the reinstatement of the business of one session in the subsequent session.

Prorogation has the distinct effect of interrupting the business of Parliament and, possibly, altering its agenda. Its most significant impact is on the legislative process.

According to *Beauchesne* [Fifth] Edition, Citation 167:

(1) The effect of prorogation is at once to suspend all business until Parliament should be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed. Every bill must therefore be renewed after a prorogation, as if it were introduced for the first time.

*Bourinot* Fourth Edition, pages 102 and 103, states this in even more explicit terms:

The legal effect of a prorogation is to conclude a session; by which all bills and other proceedings of a legislative character depending in either branch, in whatever state they are at the time, are entirely terminated, and must be commenced anew, in the next session, precisely as if they had never been begun.

Thus prorogation gives Parliament the chance to start anew in dealing with the business of the nation.

While the effects of prorogation are clear, there have been many occasions when the Government has sought the permission of the House to reinstate legislation considered in the previous session. This has always been considered an extraordinary procedure. In fact, on two separate occasions, July 22, 1977, and March 22, 1982, the House amended its Standing Orders to permit certain bills to be reinstated in the next session.<sup>2</sup> These and other instances of reinstatement—including several proposed in this Third Session—have been dealt with by unanimous consent.

In the situation before us, the Chair appears to be facing an “unprovided case” as I understand the terms of Standing Order 1. In considering this case, I am mindful of the words of one of my predecessors [Hon. Lucien Lamoureux] in his ruling of March 23, 1966:

It is only in exceptional circumstances and when there is little doubt about it that the Speaker can intervene and, of his own initiative, amend the resolution proposed by an honourable Member.<sup>3</sup>

I have carefully reflected on the learned ruling of Speaker Macnaughton on June 15, 1964,<sup>4</sup> which I commend to the attention of honourable Members. I have had, reluctantly, to conclude that this is indeed one of those exceptional instances to which Speaker Lamoureux referred.

The Chair can find no precedent for the reinstatement of bills by way of motion, following notice. Honourable Members may wish to refer to a ruling on June 13, 1988, which offers certain useful parallels.<sup>5</sup> However, despite the unprecedented nature of this situation, the Chair has found nothing in the rules of the House or in our practice which precludes such an approach and accordingly will allow the motion to proceed.

However, if this approach to reinstatement of business is acceptable, the form of the motion poses some difficulties. Some honourable Members contend that the motion must be divided so that a separate debate and a separate vote can be held on each item of business addressed. The Chair views the subject of the motion as the reinstatement of business, not the individual items of business to be reinstated, and therefore concludes that a single debate will give Members adequate opportunity to express themselves on the motion.

Nevertheless, the effect of the motion is to reinstate several distinct pieces of legislation and Members must be afforded an adequate opportunity for assent or dissent on each of those items. Accordingly, separate questions will be put on each of the bills to be reinstated.

The reference to Bill C-73 also causes some concern since it was reinstated by unanimous consent on May 23, 1991, and has now been disposed of by the House.

Citation 424[4] of *Beauchesne* Fifth Edition notes that the Speaker:

has the [unquestioned] authority to modify motions with respect to form.

Accordingly, no question will be put on this item.

In summary, Government Motion No. 1 will be dealt with in the following manner: there will be a single debate and five separate questions will be put, namely, on the reinstatement of Bill C-26, Bill C-58, Bill C-78, Bill C-82 and Bill C-85. No question will be put on Bill C-73. The enabling and final paragraphs of the motion will, as appropriate, form part of each question put.

*Postscript: Immediately after the Speaker's ruling, the Hon. Charles Mayer (Minister of Western Economic Diversification and Minister of State (Grains and Oilseeds)) moved closure on Government Business No. 1. The closure motion was agreed to after a recorded division.*

1. *Debates*, May 28, 1991, pp. 643-55.
2. *Debates*, July 22, 1977, p. 7925; March 22, 1982, pp. 15672-3.
3. *Debates*, March 23, 1966, p. 3083.
4. *Debates*, June 15, 1964, pp. 4303-6.
5. *Debates*, June 13, 1988, pp. 16376-9.

## THE LEGISLATIVE PROCESS

Committee of the Whole: closure motion

December 21, 1988

*Debates*, pp. 539-41

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**Context:** On December 21, 1988, the Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board) and Acting President of the Treasury Board) moved a motion for closure on the Committee of the Whole stage of Bill C-2 respecting the Canada-United States Free Trade Agreement. Mr. Peter Milliken (Kingston and the Islands) immediately rose on a point of order to argue that the motion and its previous notice were not in order since debate on certain parts of the Bill had not begun nor been postponed and therefore could not be "further postponed" as stipulated by the Standing Order. After hearing his arguments and those of other Members, the Deputy Speaker and Chairman of Committees of the Whole (Mr. Marcel Danis) suspended the sitting.<sup>1</sup> Later that evening, he rendered his decision which was subsequently appealed to the Speaker. Upon receiving the report from the Chairman, the Speaker briefly suspended the sitting to consider the matter and then returned to the House where he upheld the decision of the Chairman.

The texts of the Chairman's decision and the subsequent Speaker's ruling on appeal are reproduced in their entirety below.

### DECISION OF THE CHAIR

**The Chairman (Mr. Danis):** I am now ready to rule on the point of order raised by a number of Members.

In the point of order raised earlier today, the honourable Member for Kingston and the Islands argued that the honourable Minister of State for the Treasury Board was premature in giving notice of closure in relation to Bill C-2 because debate had not begun on many of the clauses that he referred to in his notice.

This leads easily to the further argument that the Minister's motion now before the Chair should be rejected. Since this motion must flow from his notice of yesterday, it too, it is argued, is defective.

The honourable Member for Kingston and the Islands and the honourable Member for Kamloops (Mr. Nelson Riis) quoted from the Speaker's ruling made last week on December 15, 1988 in support of their argument.<sup>2</sup> I should first address that issue.

Standing Order 57, without a doubt, provides for the giving of notice of closure either in the House or in Committee of the Whole. The Speaker's ruling of December 15, 1988 clarified what appeared to be an ambiguity as to the timing of the notice, and he ruled that notice can only be given once the debate has commenced on the matter to be closed.

Consideration of Bill C-2 in Committee of the Whole has also without a doubt begun, particularly as the committee is currently on Clause 2 of the Bill. The Minister, during the course of the consideration of Clause 2, gave notice of his intention to close debate on Clause 2 and on all remaining clauses of the said Bill. The timing of the Minister's action is, in my view, in keeping with the Speaker's ruling. Unlike the situation referred to last week, the Minister has served notice after debate on the committee stage had begun.

The honourable Member for Kingston and the Islands and the honourable Member for Kamloops further argued that the Minister's motion is procedurally faulty because it attempts to closure in Committee of the Whole parts of the Bill that have not yet been debated or postponed.

The honourable Member for Kamloops is right in saying that *Beauchesne Fifth Edition*, page 118, Citation 334, paragraph (8), sheds little light on this matter and that the citation is not quite definitive.

And I quote:

Precedents conflict as to whether closure may be moved on a clause which has not yet been called and postponed in a Committee of the Whole. On four occasions (1913, 1917 (twice) and 1919) all clauses had been postponed before closure was moved. On two occasions (1932 and 1956) closure was used on clauses which had not been called.

The committee will appreciate that since notice of this point of order was given yesterday, I have, in anticipation, reviewed in detail all the precedents mentioned in that citation, and for the benefit of those who may not yet have time to do so, I believe it would be useful to take the time to summarize them.

In 1913, the order in Committee of the Whole was on the Naval Aid Bill [No.] 21. On February 28, 1913, debate commenced in Committee of the Whole on the Bill which contained five clauses. Clause 1 was adopted; Clauses 2 to 5 were all debated and postponed. Prime Minister Borden then proposed a new Clause 6, and it was debated and postponed. On May 8, 1913, notice of closure was given by the Prime Minister. On May 9, 1913, the Prime Minister moved:

That further consideration of the second, third, fourth and fifth [clauses] and the postponed sixth [clause] of this Bill shall be the first business of the committee and shall not be further postponed.<sup>3</sup>

This motion covered all remaining clauses of the Bill [and] a new proposed Clause 6. The motion was agreed to 71 yeas; 44 nays. No procedural objections were made on the proceedings.

It should be noted that Prime Minister Borden had a very specific purpose in postponing consideration of all the clauses before invoking closure. Under our rules, new clauses are considered only after all clauses have been considered. I refer honourable Members to *Beauchesne Fifth Edition*, Citation 765.

Therefore, had the Prime Minister proceeded in any different manner, he could not have proposed his new Clause 6 to the Naval Bill since closure could preclude the Committee of the Whole from reaching Clause 5 before the hour provided for interruption.

In 1917, there were two occurrences of closure in Committee of the Whole. All four clauses of Bill [No. 125, *The Canadian Northern Railway Act, 1913*], and all five clauses and the schedule of Bill [No. 133, *The War-Time Elections Act*], were first postponed before closure was invoked. The *Debates* or the *Journals* offer no explanation of why this procedure was followed and there was no objection or procedural discussion.<sup>4</sup>

The 1919 case is more analogous to the 1913 case. The Committee of the Whole was debating Bill [No. 70, *The Canadian National Railway Company Act*]. The Committee had adopted some clauses and postponed others in what was a 30-clause Bill. As in 1913, the Prime Minister was required to seek the postponement of all the clauses because he, too, wished to move two new clauses numbered 31 and 32. Like Prime Minister Borden in 1913, if he had proceeded any differently and had invoked closure any earlier, he would probably have been precluded from moving any amendments.<sup>5</sup>

The next instance of closure in Committee of the Whole was on April 1, 1932. Prime Minister Bennett moved:

... that further consideration of the title and Clauses 1, 2 and 3 of *The Unemployment and Farm Relief Continuance Act, 1932*, shall be the first business of the committee and shall not be further postponed.<sup>6</sup>

This motion covered all clauses of the Bill, although only Clause 1 had been formally called and debated. The motion was put and carried and there was no procedural challenge to the fact that some clauses had not been called or postponed. This precedent is virtually identical to the situation the committee now faces.

The most recent example of closure in Committee of the Whole took place on May 24, 1956, when debate commenced in Committee of the Whole on Bill C-298, the Northern Ontario Pipe Line [Crown] Corporation. Clauses 1 to 3 were postponed, Clause 4 was being debated, and Clauses 5 to 7 were never called. On May 30, 1956, notice of closure was given by Prime Minister St. Laurent. On May 31, 1956, Prime Minister St. Laurent moved:

That at this sitting of the [Committee of the] Whole House on Bill No. 298, *An Act to establish the Northern Ontario Pipe Line Corporation*, the further consideration of Clauses 1, 2, 3, 4, 5, 6, 7, the title of the said Bill, and any amendments proposed thereto, shall be the first business of this Committee and shall not be further postponed.<sup>7</sup>

The closure motion covered all clauses of the Bill, although Clauses 5 to 7 were never called or debated. A point of order was raised, and the Chairman of the Committee of the Whole ruled the motion in order, referring to the 1932 precedent. His decision was appealed to the Speaker, who confirmed the ruling. The Speaker, whose rulings were at that time subject to an appeal of the House, [was] also challenged.

The question was put to the House for decision, and the ruling that the Minister could closure clauses not yet called was sustained by a vote of 143 yeas to 50 nays.<sup>8</sup>

To address the matter raised by the honourable Member for York South—Weston [Mr. John Nunziata], I should point out to the committee that the language used by the Minister today is the same as in every case heretofore mentioned.

As I said earlier, *Beauchesne* Fifth Edition, Citation 344, offers little direction, but an analysis of the cases seems to provide some indication.

In two cases, 1913 and 1919, it would appear that the clauses were postponed for procedurally strategic reasons. In two other cases, both in 1917, all clauses were simply postponed and the debates shed no light on why. On the last two occasions when closure was invoked, in 1932 and 1956, some of the clauses in the Bills concerned had not been reached, and in the latter case rulings were made by the Chairman of the Committee of the Whole and the Speaker, which were subsequently confirmed by the House itself, that the closure motion was in order.

The 1958 Fourth Edition of *Beauchesne* gives us a little more to consider. The committee will remember that prior to 1968 most Bills of Supply and of Ways and Means destined for a Committee of the Whole were preceded by a resolution first considered by the Committee of the Whole.

Citation 167 of the Fourth Edition of *Beauchesne* says, in part:

If, under this Standing Order, the notice applies to several proposed resolutions, the whole of the sittings allowed for discussion may be engaged in only a part of them and the remainder has to be voted on without the House having debated them at all. The right of free debate is thereby abolished in so far as those proposed resolutions are concerned.

It is obvious from that citation that *Beauchesne* 1958 Fourth Edition at least envisaged the possibility of closure being applied in Committee of the Whole to parts of a Bill not yet debated.

The honourable Minister of State for the Treasury Board made a strong point in underlining that the 1956 precedent which confirms the 1932 precedent carries the authority of sustained Chairman's decision, a Speaker's ruling, and a recorded decision by the House itself.

The honourable Member for Peace River (Mr. Albert Cooper) accurately pointed out that in all the recent discussions of procedural reforms, closure has remained untouched.

Therefore, in light of the 1958 *Beauchesne* citation, the precedents of 1932 and 1956, and the lack of further direction by the House since 1956, I must rule that the Minister's notice given yesterday is valid and that his proposed motion is in order.

*And Members having appealed the Chairman's ruling to the House:*

**Mr. Speaker:** I have been following the proceedings carefully. I listened to the Chairman's ruling, and I have considered the arguments from both sides of the House. During the recess just concluded I read the Chairman's ruling, and I am satisfied that the two precedents mentioned, that of 1932 and that of 1956, are persuasive precedents. I rule that the Chairman has properly applied them to the issue before us. Therefore, I confirm the ruling of the Chair.

*Postscript: Following the appeal to the Speaker, the closure motion was put to the House and agreed to.*

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1. *Debates*, December 21, 1988, pp. 532-38.
2. *Debates*, December 15, 1988, pp. 76-7.
3. *Debates*, May 9, 1913, p. 9445.
4. *Debates*, August 28, 1917, p. 5016; September 11, 1917, pp. 5689-5702.
5. *Debates*, April 28, 1919, p. 1797.
6. *Debates*, April 1, 1932, p. 1609.
7. *Debates*, May 31, 1956, p. 4498.
8. *Debates*, June 1, 1956, p. 4570.

## THE LEGISLATIVE PROCESS

Closure: interpretation of standing order; amount of time allotted to last speaker recognized to participate in debate prior to “cut-off” time

June 22, 1989

*Debates*, pp. 3492, 3535-6

**Context:** *On June 21, 1989, during debate on the motion for second reading of Bill C-21, respecting the Unemployment Insurance Act amendment, to which closure had been applied, Mr. Dan Heap (Trinity—Spadina) was recognized to participate in debate just prior to one o'clock a.m. Shortly thereafter, the Deputy Chairman of Committees of the Whole (Hon. Steven Paproski) interrupted the Member's speech and put the questions necessary to dispose of the second reading of the Bill.<sup>1</sup> The following day, Mr. Heap rose to seek clarification of Standing Order 57 (closure rule) and particularly whether he should have been allowed to speak for a full twenty-minute period. The Speaker made some preliminary remarks and indicated he would return to the House later in the day with clarification on this matter.<sup>2</sup> Both statements are reproduced below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** First, I want to thank the honourable Member for Trinity—Spadina for letting the Chair have notice of this matter. I have, as I am sure others have, looked at Hansard and what the honourable Member for Trinity—Spadina relates does not show up in Hansard. However, I have made inquiries this morning and I understand that the question asked by the honourable Member for Trinity—Spadina with respect to whether he had more time or not does come through on the tape.

The point the honourable Member makes is an important one. I would ask his co-operation to let the Chair consider the matter, and I will report back very quickly with respect to the situation.

I also want to point out to honourable Members that I thank the honourable Member for Trinity—Spadina for the way he has put his point of order. He is asking for clarification, and I am grateful that he is not putting the Chair in the position of having to contemplate whether or not the vote that followed is invalid. I think I can advise honourable Members that the vote would have to stand, but I appreciate the way the honourable Member has put the point of order, and I will come back very shortly with clarification.

### *Following Question Period:*

**Mr. Speaker:** This morning, as Members will recall, the honourable Member for Trinity—Spadina raised a matter with the Chair asking for clarification as to the time allowed at the closing hour after a closure motion. Honourable Members will remember that as recorded by the honourable Member for Trinity—Spadina at the hour, the Speaker in the Chair at that time rose and apparently the

honourable Member for Trinity—Spadina was trying to send a message, or send a question as to whether or not he could continue because he would still have had 15-minutes of his 20 minutes speaking time.

As I say, I have looked at the *Hansard* record and that does not show up. However, there is an indication that indeed the Honourable Member for Trinity—Spadina did try to ask a question, at least that is what appears on the tape. It would appear that that was not heard by the Chair at that time. The honourable Member for Trinity—Spadina is asking a narrow but important question, and that is that if something like this does happen again, does the speaker who has the floor have the right to use up the still existing part of his or her 20-minute speech.

I draw the attention of honourable Members to the *Annotated Standing Orders* which have been brought out recently, on page 196 in the second paragraph, and I think that this is helpful.

All questions necessary to dispose of the closed business will be put no later than 1.00 a.m. or as soon as possible thereafter, to allow any Member who might have been recognized before 1.00 a.m. to finish speaking. No Member shall be given the floor after 1.00 a.m. to debate the question. When the Speaker interrupts at 1.00 a.m. or shortly thereafter, any bells summoning Members to a recorded division to dispose of the question or questions—

Et cetera.

So I think that clearly sets out the situation. I would draw honourable Members to a ruling of the Speaker as recorded in 1964. Speaker Macnaughton was in the Chair and this exact point was raised. I might read this.

Objection was raised by the honourable Member for Bow River (Mr. Woolliams) who proposed a motion “That the Right Honourable the Leader of the Opposition be now heard”. We have had a vote on that motion. Therefore, I now have before me an Order of the House directing the Chair, according to my view, that the Right Honourable the Leader of the Opposition be not now heard but that the Right Honourable the Prime Minister be now heard. I must have regard to the effect and terms of Citation 167, paragraph 2, of *Beauchesne* which is in these words: “If a Member has taken the floor at 12:55 o’clock, he is entitled to speak for 20 minutes, but no Member “shall rise to speak” after one o’clock”.<sup>3</sup>

I hope this helps to clarify the situation for all honourable Members. Again, I want to thank the honourable Member for Trinity—Spadina for the careful way in which he assisted the Speaker by putting the point of order to me this morning.

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1. *Debates*, June 21, 1989, pp. 3484-5.

2. *Debates*, June 22, 1989, p. 3492.

3. *Journals*, December 14, 1964, p. 1000.

## THE LEGISLATIVE PROCESS

Time allocation motion, acceptability: report stage and third reading

August 16, 1988

*Debates*, pp. 18380-1

**Context:** On August 15, 1988, during debate at report stage on Bill C-130 respecting the Canada-United States Free Trade Agreement, the Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)) rose on a point of order to state that the two opposition parties informed him that they had reached an agreement to limit debate on the bill at report stage and third reading. According to Mr. Lewis, this agreement included 150 days debate for report stage and 200 days for third reading. Arguing that this agreement made a mockery of the negotiations, Mr. Lewis then gave notice of the Government's intention to move a motion for time allocation as stipulated by the Standing Orders.<sup>1</sup> Immediately thereafter, the Hon. Herb Gray (Windsor West) rose on a point of order to take exception to the notice. Mr. Gray argued that the notice was flawed in two ways: that the notice did not specify the time to be allotted and that since, as Mr. Lewis pointed out, the opposition parties had reached an agreement, which in Mr. Gray's view met the requirements of the Standing Orders, the notice was not valid.<sup>2</sup>

The debate on this matter resumed the following day when Mr. Lewis proposed to move the motion for time allocation. Following this, Mr. Gray again rose on a point of order to argue against the motion.<sup>3</sup> On this day, the debate centered mainly around the issue of whether the agreement reached by the opposition parties, to which Mr. Lewis had referred, met the requirement of the Standing Orders which stipulated that "a majority of the representatives of the several parties have come to an agreement." After hearing comments from other Members, the Speaker ruled on both issues later in the day. The text is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** Yesterday the honourable Minister of State (Treasury Board) gave oral notice of a motion for time allocation for the report stage and third reading stage of Bill C-130 the *Canada-United States Free Trade Agreement Implementation Act*, pursuant to Standing Order 117.

The honourable Member for Windsor West then rose on a point of order to argue the notice was defective because it failed to specify the number of hours or days to be allocated. This morning he further claimed that the Minister could not proceed because agreement had been reached under Standing Order 116 "by a majority of the representatives of the several parties".

The honourable Member for Kamloops—Shuswap (Mr. Nelson Riis) has supported the honourable Member for Windsor West in both the arguments and took the position that the Government House Leader was precluded from resorting to Standing Order 117 because of a declared agreement between the

Liberal Party and the New Democratic Party on a specific number of days for debate at report stage. That is, the agreement between the Liberal Party and the New Democratic Party indicated that they had agreed on 150 days at report stage and on 200 days at third reading with respect to the free trade Bill and, as they argued, as required in the Standing Order.

I will first address the issue relating to the deficiency of the oral notice. The basis of the argument against that notice was because it did not specify the amount of time to be allocated for further debate. The Chair has carefully reread Standing Order 117. When it deals with notice the Standing Order employs the words “and has given notice of his or her intention to do so”. It appears to require only notice of intention and not notice of the text of the motion *per se*.

Furthermore, I can point to two precedents, on May 3, 1988 and June 3, 1988, when the same notice of intention was given without specifying a number of days. I should point out that I bring both these occasions to the attention of the House, not necessarily to suggest that just because it has been done once it ought necessarily, to legally be done again but to bring the matter to the attention of the House. I do not take those two incidents as the basis of a legal, procedural precedent, but I do bring them to the attention of the House.

I remind honourable Members that at the moment the motion which may eventually be proposed to the House by the Chair is one that has been proposed by the honourable Minister. A point of order has interrupted that process. I am considering whether or not the honourable Minister’s motion is acceptable. If it is acceptable, then it would inevitably be proposed by the Chair, and the motion that might eventually be proposed to the House by the Chair is required to be specific and to provide for at least one sitting day for report stage and at least one sitting day for third reading. I think that comes from any clear reading of the rules.

I must therefore rule that the Minister has properly given notice of his intention and that his action was in keeping with the House’s usual form.

The second point the honourable Member for Windsor West argued this morning is more complex and simply restated is: Is a Minister of the Crown precluded from invoking Standing Order 117 if a majority of the Parties, not including the Government, states that it has reached an agreement under Standing Order 116?

The first sentence of Standing Order 116 bears repeating:

“When a Minister of the Crown from his or her place in the House, states that a majority of the representatives of the several parties have come to an

agreement in respect of a proposed allotment of days or hours for the proceedings at any stage of the passing of a public bill....”

I have read carefully the words “representatives of the several Parties”. The honourable Member for Windsor West has stated those words mean the three Party House Leaders, but the use of the word “representatives” is open to considerable interpretation and could mean a majority of the Members of each Party or, indeed, even a majority of the Members of the House. I think the honourable Member for Windsor West and the honourable Member for Kamloops—Shuswap will remember that earlier I may have made a comment in that direction. I probably should have used the counsel of the seniors from whom I learned to do court work who always said that it was wise, a judge who did not comment while listening to an argument. In any event, these words have never been clarified. I have to say now, after having given both honourable Members’ submissions careful consideration, that I would tend to agree with the view that the words mean the House Leaders of the several Parties or their appointees, for no other definition is practicable since there is no [formal] mechanism in the Standing Order to determine the majority of a larger group of Members.

That being said, I am not sure I can agree with the honourable Members for Windsor West and Kamloops—Shuswap that two Parties in opposition alone can form the basis of an agreement that would compel a Minister of the Crown to act under Standing Order 116. Just so the honourable Members and the public understand, if that proposition were accepted by the Chair it would mean that two opposition parties, or three opposition parties, or whatever number of opposition parties could form an agreement to decide on how many days of debate would continue on any given Bill, and the Government would thereby be bound by that agreement. All three Standing Orders, that is 115, 116 and 117—and they all deal with the question of how to handle the time allocation at various stages of debate on a Bill—in their opening sentences clearly leave the initiative of announcing any agreement or no agreement to a Minister. It is my view that a Minister must be party to any agreement and that rising in his or her place under Standing Order 115 or 116 to take any initiative means that he or she is supportive of the proposed proposal for time allocation.

Standing Order 117 provides for a Minister to act if there is no agreement and, as I stated on June 6, 1988, the Chair must take a Minister’s declaration at face value and cannot judge the quality of negotiations or of any proposals that may have been made. In this case I was not even asked to judge on the quality of the negotiations because there is a document that indicates the arrangement at least had been entered into with two of the Parties in the House, albeit, not that of the Government.

As a consequence, I have to rule that the notice was in order and the motion is receivable.

*Postscript: Following the Speaker's ruling, Mr. Lewis moved the motion for time allocation which was subsequently agreed to.*

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1. *Debates*, August 15, 1988, pp. 18309-10.
2. *Debates*, August 15, 1988, pp. 18310-1.
3. *Debates*, August 16, 1988, pp. 18352-5.

## THE LEGISLATIVE PROCESS

Time allocation motion, acceptability: report stage and third reading

December 9, 1992

*Debates*, p. 14922

**Context:** On December 9, 1992, Mr. Nelson Riis (Kamloops) rose on a point of order asking the Speaker to refuse the motion for time allocation at report stage and third reading of Bill C-91 respecting the *Patent Act*. Mr. Riis argued that while the motion might be procedurally correct, the Speaker had “the authority and the responsibility to prohibit a motion of time allocation, if [...] it is being used abusively.” He requested that the motion be refused until the House had further opportunity to debate the Bill or until the motion itself was amended to allow for additional debate. After hearing representations from Mr. Riis and other Members,<sup>1</sup> the Speaker rendered his decision which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I know that the House would want me to respond to the honourable Member for Kamloops and the honourable Member for Cape Breton—East Richmond (Mr. David Dingwall) and the honourable Member for Annapolis Valley—Hants (Mr. Pat Nowlan) who have raised an issue here which is, to put it simply, that it is inappropriate for the government to move now for time allocation. Some comments that I have made in the past have been quoted and I have listened very carefully to what I once said.

The difficulty it seems to me that those proponents of the motion are in is that, as the [Government House Leader the Hon. Harvie Andre] points out, there have been changes in the rules and the government has followed exactly the course it must follow under the present rules which govern us.

There has been some suggestion that when the present rules were [passed] it was without the full consent of all the Members in the House and that may well have been the case. The Speaker’s area of manoeuvre in acting on discretion is always somewhat circumscribed and in this case it clearly is very much constrained.

I have to advise the House that in my view the government has followed exactly what the rules of the House are. As a consequence, while I have listened with great interest and some sympathy to the points made by Members of the opposition, nonetheless I must rule that the matter can go forward.

**Postscript:** At the conclusion of his ruling, the Speaker put the question on the time allocation motion and it was agreed to following a recorded division.

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1. *Debates*, December 9, 1992, pp. 14918-22.

## THE LEGISLATIVE PROCESS

Time allocation motion, acceptability: second reading stage

March 31, 1993

*Debates*, pp. 17860-1

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**Context:** On March 31, 1993, Mr. Bill Blaikie (Winnipeg Transcona) rose on a point of order asking the Speaker to refuse the motion for time allocation at second reading of Bill C-115 respecting the North American Free Trade Agreement, which had just been moved by the Government.<sup>1</sup> Mr. Blaikie argued that the motion for time allocation was an unreasonable restriction of debate as there had been only limited debate and he referred at length to a previous decision by the Speaker dealing with the rights of the majority and the minority. The Speaker also heard representations from various other Members on this issue.<sup>2</sup> The Speaker ruled immediately. The text of the ruling is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I am going to respond very carefully to what has been said. The facts of the matter are clear, and that is that the bill is a very important bill. All Members of the House agree with that and probably the country does too.

There have been suggestions that based on another time a few years ago when I had to exercise some discretion in a difficult situation I might be able to do it again in this case. I made remarks then indicating that as a parliamentarian it was important that matters were debated for a reasonable length of time.<sup>3</sup> I think that is an appropriate attitude to take.

I do though have to remind the House, and I ask the House to have some sympathy with the position of the Speaker on this, that I also have to make decisions according to the law. Sometimes it is not always understood that the Chair is constrained in what the Chair can do by the rules which this House has passed.

It is not surprising that sometimes some honourable Members, or even members of the public, feels that the rules we have set for ourselves may in some cases be unreasonable or even worse. However, it is extremely important I think that the Chair be bound by those rules until the House decides to change them.

I do not want to refer to what is in a committee report that I have not yet seen as tabled in the House. The honourable Member for Winnipeg Transcona suggested—in fact he stated—that there is a committee report coming that may be tabled in the House and may be dealt with by the House that addresses this question. I think he was suggesting that maybe in that report there would be some recommendation to give the Chair more discretion than the Chair has at the moment.

There have been suggestions made that in the British House under circumstances like this the Speaker does have a discretion, but it is my understanding that discretion, that power or that right is spelled out in the British rules. The honourable Government House Leader (Hon. Harvie Andre) has come back and reminded us of something which is also a fact, and that is that in the British House the time for debate is generally probably more brief than in this House. However, that is a matter of argument I think and is not very much assistance one way or the other to the Chair.

The rule that I have to consider is of course Standing Order 78(3)(a) and members are familiar with it. I think that it was passed in April 1991 by this House. The Government House Leader is correct, as I understand it, when he says that the government has followed exactly that rule. I think he is correct in that.

I should bring to the attention of the House a ruling I made on December 9, 1992. I am going to read it because again I was faced with the same difficulty that I am faced with today. I said:

I know that the House would want me to respond to the honourable Member for Kamloops and the honourable Member for Cape Breton—East Richmond and the honourable Member for Annapolis Valley—Hants who have raised an issue here which is, to put it simply, that it is inappropriate for the government to move now for time allocation. Some comments that I have made in the past have been quoted and I have listened very carefully to what I once said.

The difficulty it seems to me that those proponents of the motion are in is that, as the honourable House Leader points out, there have been changes in the rules and the government has followed exactly the course it must follow under the present rules which govern us.

There has been some suggestion that when the present rules were [passed] it was without the full consent of all the Members in the House and that may well have been the case. The Speaker's area of manoeuvre in acting on discretion is always somewhat circumscribed and in this case it clearly is very much constrained.

I have to advise the House....<sup>4</sup>

Then I went on to deal with that point. My situation at that time was that whatever I may have felt personally about the situation, I felt that I had to follow the rules that we have. If the House, which it has not done, were at some point to grant to the Speaker—any Speaker—the power to judge the reasonableness of the use of this rule then I would have no hesitation in doing so. I hope I would do it on the basis of common sense on the circumstances.

Also I think I would reach back to over 20 years in this place and apply some of my experience in that manner. I have to advise the House that the rule is clear. It is within the government's discretion to use it. I cannot find any lawful way that I can exercise a discretion which would unilaterally break a very specific rule.

I have listened to this debate. I have listened to the honourable Member for Winnipeg Transcona and others. For very real reasons it is a matter that should have been discussed in the House today. This is especially because the honourable Member for Winnipeg Transcona was one of the active and helpful members of the reform committee that was set up consisting of all parties some years ago and has taken a great interest in the reform of our rules.

I have to say, with I hope some sympathy and I hope some understanding from the House, that I feel I am not in a lawful position to unilaterally exercise a discretion in the face of the rule that is in front of us.

Therefore I have to put the motion and I must ask the House.

*Postscript: At the conclusion of his ruling, the Speaker put the question on the time allocation motion and it was agreed to following a recorded division.*

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1. *Debates*, March 31, 1993, p. 17854.
2. *Debates*, March 31, 1993, pp. 17854-60.
3. *Debates*, April 14, 1987, pp. 5119-23.
4. *Debates*, December 9, 1992, p. 14922.

## THE LEGISLATIVE PROCESS

Omnibus Bills: admissibility; long titles

June 8, 1988

*Debates*, pp. 16252, 16255-8

**Context:** In 1988, the Government proposed to introduce legislation to implement the Canada-U.S. Free Trade Agreement. From the time that notice of a Ways and Means motion was given until the debate at second reading began, several Members raised points of order concerning, among other issues, the admissibility of the Ways and Means motion, the need for the bill to be introduced prior to first reading, the nature of an omnibus bill, the long title of the bill and the fact that the bill amended other bills which were still before the House. A lengthy procedural debate took place and after hearing arguments from Members over several days, on June 8, 1988, the Speaker rendered an extensive ruling on the points raised throughout the various debates.

Among the points raised:

On May 18, 1988, Mr. Nelson Riis (Kamloops—Shuswap) rose on a point of order to assert that the Government was not required to table a notice of a Ways and Means motion for implementation of the Free Trade Agreement between Canada and the United States since the proposed amendments in no way increased the charge on the taxpayer and because such a motion might restrict Members' ability to amend the bill based on the said motion.<sup>1</sup> After stating that the Standing Orders clearly authorized the Minister to table a notice of a Ways and Means motion, the Speaker took the matter under advisement. On May 19, 1988, the Speaker heard other comments and ruled that it would be premature to deliver a ruling without seeing the contents of the bill.<sup>2</sup> Although he put the question on the Ways and Means motion (notice of which had been given during the previous sitting), he indicated that did not mean he might not have further observations to make on the matter.

On May 24, immediately before putting the question on the motion for first reading and printing of Bill C-130, An Act to implement the Free Trade Agreement between Canada and the United States of America, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order to argue that the Government was wrong in not asking leave to introduce the Bill even though a Ways and Means motion had been agreed to, since the Bill was also accompanied by a Royal Recommendation.<sup>3</sup> The Speaker indicated that he would look into the matter carefully but that in the interests of the House, and to allow for the criticism put forward by the Opposition, he would proceed immediately with a vote on the introduction of the Bill, followed, if necessary, by a vote on the motion for first reading and printing of the Bill.

On May 30, as a consequence of an understanding between the Government and Opposition Members, a wide-ranging procedural debate was held on the admissibility of Bill C-130.<sup>4</sup> The Hon. Herb Gray (Windsor West) rose on a point of order to discuss the first of a series of points regarding Bill C-130. His first argument was that the Bill was not an acceptable omnibus bill since the Bill attempted to amend

twenty-seven existing federal laws and that the Bill was of an "... unacceptable omnibus nature, and cannot be proceeded with in this House in its present form and instead must be withdrawn."<sup>5</sup> Mr. Gray also raised concerns about the long title of the Bill, which, in his opinion, should have included a reference to all twenty-seven statutes that were to be amended by the legislation. Mr. Gray, and other Members, argued that as the long title did not contain references to the other statutes, the opportunity for Members to amend the legislation would be limited.<sup>6</sup> The Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)), on behalf of the Government, stated that the Bill was a true omnibus bill as there was a single overriding principle, that of the implementation of the free trade agreement.<sup>7</sup>

On June 1, the Speaker continued to hear comments concerning the omnibus nature and long title of the Bill.<sup>8</sup> Following completion of remarks on these issues, Mr. Gray then continued his point of order regarding the admissibility of the Bill by expressing concern over the transition section of the Bill and the improper use of Bill C-130 to amend bills still before the House.<sup>9</sup> He argued that since Bill C-130 was seeking to amend bills that had not yet been adopted, the Bill was not in order.

The Speaker took the matters under advisement and on June 8 rendered an extensive decision which addressed each of the points brought up during the course of the debate. *That portion of his ruling dealing with the Ways and Means motion attached to the Bill and the vote on the introduction of the Bill can be found in Chapter 6.* Reproduced below are the segments of his ruling detailing his reasoning on the omnibus nature of the Bill, the insufficiency of detail in its long title, and the acceptability of a bill amending another bill currently before the House.

### **DECISION OF THE CHAIR**

**Mr. Speaker:** I am now ready to rule on the arguments given some days ago with respect to Bill C-130. In my view, they were excellent arguments.

I wish to advise honourable Members that the Chair has reviewed all of the points of order relating to Bill C-130, *An Act to implement the Free Trade Agreement between Canada and the United States of America*. These points of order were raised by several honourable Members on May 18, May 19, [May 24], May 30, and again on June 1....

The arguments relate to five general themes: first, the acceptability of the Ways and Means motion relating to the Bill; second, the requirement for asking the House for leave to introduce a Bill based on the Ways and Means motion already adopted when a Royal Recommendation is attached to the Bill; third, the omnibus nature of the Bill; fourth, the fact that the title of the Bill does not list all the statutes to be amended by the Bill; and fifth, the issue that Bill C-130, the free trade Bill, seeks to amend certain Bills which have yet to be passed by the House or receive Royal Assent.

The Chair has decided to deal with the points of order from a thematic point of view for the sake of clarity.... I should like to deal with the arguments that relate to the omnibus nature of Bill C-130.

The honourable Members for Windsor West, Winnipeg—Fort Garry (Mr. Lloyd Axworthy), and Kamloops—Shuswap argued on May 30 that Bill C-130, because it seeks to amend 27 statutes, has gone, in the words of Speaker Lamoureux, “beyond what is acceptable from a strictly parliamentary standpoint”.

The honourable Member for Windsor West suggested that the ruling of Speaker Sauvé in 1982 relating to the Energy Security Bill should not be used as guidance because it was “so brief as to be peremptory”. He also referred to the outcome of the 1982 crisis over the Energy Security Bill whereby the Government proposed a motion dividing the Bill into several pieces of legislation and the House concurred with that proposal. He suggested that the Chair use that decision of the House to establish a precedent of splitting a Bill by a ruling of the Speaker.

The honourable Member for Kamloops—Shuswap argued a parallel between the decision to split a resolution during the flag debate, made by then Speaker Macnaughton on June 15, 1964, and the splitting of this Bill. He referred to Citation 415(1) of *Beauchesne* Fifth Edition which clearly empowers the Speaker to divide a motion which contains “two or more distinct propositions”.

In attempting to resolve the issues relating to this Bill and omnibus Bills generally, I believe it might be useful to attempt first to define such a Bill. There appears to be no specific definition in the procedural authorities. The most exact definition the Chair could find and agree with is that given by the honourable Member for Windsor West, which is found at page 15880 of *Hansard* for May 30, 1988, where he said the following:

The essential defence of an omnibus procedure is that the Bill in question, although it may seek to create or amend many disparate statutes, in effect has one basic principle or purpose which ties together all the proposed enactments and thereby renders the Bill intelligible for parliamentary purposes.

The Chair is grateful to the honourable Member for Windsor West for those words. They have indeed assisted me greatly in arriving at a decision. I believe that his definition will stand the test of time and be useful to the House and future chair occupants for years to come.

It might also be useful for the House to address the differences between the Energy Security Bill of 1982 and Bill C-130, now before the House.

In 1982, Bill C-94, an Act to implement the National Energy Program,<sup>10</sup> was a Bill to enact, through several statutes, the policy of the then administration respecting national energy. The scope of that policy was set according to criteria and the parameters as determined by the Cabinet of the day. It met with considerable opposition because parts of the Bill or the policy were objectionable to many Members. The result of the ensuing crisis was the eventual splitting of the Bill by the agreement of the House. I wish to underline that it was not by order of the Speaker.

Bill C-130, *An Act to implement the Free Trade Agreement between Canada and the United States of America*, as was pointed out by the Minister of State and the Parliamentary Secretary to the Minister for International Trade (Mr. John McDermid), is based on an international treaty between Canada and the United States already made public, and comprises enabling legislation required to make the agreement binding in law. The purpose of the Bill is to enact and implement the agreement. That is the single unifying thread that links all the apparent disparate provisions contained in the Bill and becomes its only object.

Interestingly, Bill C-130 creates no new statutes. The Canada-U.S. free trade agreement, however broad in scope it may be, clearly becomes the four corners of Bill C-130, and as such defines the content and scope of the Bill. There are no doubt many principles in the free trade agreement and some that honourable Members may differ with, but in the opinion of the Chair the main principle of Bill C-130 is to give force of law to a treaty signed by two sovereign nations.

I believe the House would agree that it is not the role of the Speaker to play broker between two national governments and to decide how best such an agreement might be put to the House. Where would a Speaker begin to divide such a Bill? Which parts of the agreement are independent of the others? At which point does the agreement dissolve if split into too many pieces?

Your Speaker was not at the negotiation table. I would suggest to the House that the Government, which bears the responsibility for the outcome of these negotiations, must equally retain the full responsibility for the manner in which the agreement is presented to the House.

I have stressed these particular questions because I want honourable Members to know that as your Speaker I spent many hours considering very carefully whether some of the arguments pressed upon me could practically be done.

Canada is unique in its use of omnibus Bills. Although the United Kingdom does adopt such Bills, its legislative practices are significantly different from ours, not least of all because of a much stricter control of time for debate on Bills. In Australia the practice appears to go the other way, that is, its procedures permit the grouping of related Bills for debating and voting purposes. For these reasons

the Canadian House of Commons cannot readily rely on precedent elsewhere on these matters. I know that I was urged to look elsewhere. I again want to assure honourable Members that that indeed was done.

The date when omnibus Bills were first introduced is not certain, but the practice seems to go back as far as 1888 when a private Bill was introduced to confirm two different railway agreements. The first time that a question was raised concerning the reasons why the Government chose to amend three Acts in one Bill was on April 2, 1953.

Omnibus bills are introduced by the Government for a variety of reasons. One of the most obvious is to expedite the passage of legislation. Another, is to group all the statutory amendments required for the implementation of a policy under the same bill as was the case in 1982 on Bill C-94, the Energy Security Bill.

In contrast to the reasons given by the Government for using omnibus legislation, the Opposition has argued against the acceptability of certain omnibus Bills. Among the objections cited were the lack of relevancy between the various parts of the Bill, the debate at second reading not addressing a single principle, and the lack of opportunity at second reading to vote in favour of some parts and against other parts of the Bill.

Canadian practice regarding omnibus bills has grown significantly over the last forty years. Rulings by Speakers on the admissibility of motions and on points of order have clarified some of the problems associated with omnibus bills.

Members have often referred, as did the honourable Member for Kamloops—Shuswap, to their ancient privilege to vote on each separate proposition contained in a complicated question. The following passage from page 389 of *May Twentieth Edition* is used to support this argument:

The ancient rule that when a complicated question is proposed to the House, the House may order such question to be divided, has been variously interpreted at different periods.... In 1888, however, the Speaker ruled that two propositions which were then before the House in one motion could be taken separately if any Member objected to their being taken together.

Although this ruling does not appear to have been based on any previous decision, it has since remained unchallenged. A complicated question, however, can only be divided if each part is capable of standing on its own.

In Canadian practice, this concept is supported by a cornerstone ruling of Speaker Macnaughton on June 15, 1964, in which he concluded that the Canadian Speaker also has the authority to divide complicated motions. After examining precedents in Britain and Canada, he stated on pages 430 and 431 of the *Journals*:

To summarize our procedure, it can be said that no clear precedent concerning the dividing of a question can be found in our annals.... In other

words, this would appear to be an unprovided case and ordinarily, under such circumstances, reference is made to current procedure in the British House....

Accordingly, it is my view that the procedure which applies in this case is the current procedure used in the British House, one which perhaps has not been used too frequently but which nevertheless must be recognized, and if it is to be observed on this occasion it would appear that the question of the dividing of a complicated motion rests with the Chair....

I must come to the conclusion that the motion before the House contains two propositions and since strong objections have been made to the effect that these two propositions should not be considered together, it is my duty to divide them....

Speakers following Alan Macnaughton have made it clear that the Chair's authority to divide complicated questions only applies to substantive motions and does not apply to motions which relate to the progress of Bills. As Speaker Jerome explained on May 11, 1977, on page 5522 of *Hansard*:

... there can be no doubt that a motion containing two or more substantive provisions is quite distinct from a procedural motion or a motion which is generally described as having only the effect of dealing with the progress of a Bill. The practice in respect of substantive motions has never been extended to those motions which relate to the progress of a Bill. The use of the omnibus amending Bill is well enshrined in our practices, and I really can find no reason to set aside my predecessor's very clear and sound reasoning, or the practice. Nor can I find any authority which would support an order of the Chair at this second reading stage that the Bill be divided.

I should emphasize as well that the remedy sought by the honourable Member is not to divide the Bill according to the separate statutes to be amended but by subject matter. Were that to be attempted, it would place before the Chair, it seems to me, questions of interpretation and responsibility for the drafting of an extremely complex order, which in my opinion the Chair ought not to attempt.

This conclusion had already been stated by Speaker Lamoureux on January 23, 1969, on page 617 of the *Journals* and was also echoed by Speaker Sauvé on June 20, 1983, on pages 26537-8 of *Hansard*.

In conclusion, the Canadian practice regarding the authority of the Chair to divide questions has been reserved solely for substantive motions which contain more than one proposition, where Members object to their being taken together, and the Chair has determined it is possible to divide the motion into more than one distinct proposition.

While some Members may feel that Speaker Sauvé's ruling in 1982 was too brief, one quote from that ruling seems to summarize the Chair's traditional position:

For my part, in the present circumstances, there seems little point in offering yet another opinion on a question so well addressed by my distinguished predecessors. The matter is there for all to see. It may be that the House should accept rules or guidelines as to the form and content of omnibus Bills, but in that case the House, and not the Speaker, must make those rules.

The Chair therefore must rule that while Bill C-130 is an omnibus Bill, it has the single purpose of enacting an international agreement amending several statutes. As such, it conforms to our practice and should be allowed to proceed. Until the House adopts specific rules relating to omnibus Bills, the Chair's role is very limited and the Speaker should remain on the sidelines as debate proceeds and the House resolves the issue.

A further point raised by the honourable Member for Windsor West and the honourable Member for Kamloops—Shuswap was the insufficiency of detail in the long title of the Bill because it does not list all of the statutes being amended therein. Honourable Members might wish to consult Driedger's *The Composition of Legislation, Legislative Forms and Precedents* for information on this point. This work may not have the same weight as *Beauchesne* or *Erskine May*, but it is a respected authority in legislative drafting. On pages 153 and 154 there is an explanation of Canadian practice as it relates to long titles, which clearly demonstrates that every Act being amended need not be mentioned in the title and that the Canadian practice has evolved differently from British practice by the use of generic language. If honourable Members feel, however, that such a course is necessary, I suggest that they should proceed by way of amendment and not by a decision of the Speaker to reject the Bill. The Chair wonders if including all of the statutes in the title of the Bill would thus make it any more acceptable to those who oppose it.

Finally, the Chair will address the last point which was raised on Wednesday, June 1, 1988, by the honourable Member for Windsor West. The honourable Member stated that Bill C-130 now before the House, in certain of its clauses, proposed changes to two other Bills, Bill C-60, the *Copyright Act*, and Bill C-110, the *Canadian International Trade Tribunal Act*, neither of which, to date, has received Royal Assent, one of which, Bill C-110, is at report stage. In response, the honourable Minister of State, referring to two decisions by Speaker Lamoureux, indicated that Bill C-130 was properly before the House and that the second reading motion could be put.

To begin, I should report to the House upon the status of the two Bills mentioned earlier.

Bill C-60, the *Copyright Act*, has been adopted by both the Senate and the House and is awaiting Royal Assent.

Bill C-110, the *Canadian International Trade Tribunal Act*, is on the *Order Paper* at report stage.

On April 20, 1970, Mr. Speaker Lamoureux ruled on a situation somewhat related to the present one involving a Bill which appeared to be dependent upon two other Bills then before the House. Speaker Lamoureux expressed sympathy for the Members' views in part, but at page 6048 of *Hansard* his comment reads as follows:

... [the] debate is an interesting one and the argument is not without merit. If it has fault, it is that it might be premature.

Speaker Lamoureux then suggested that the House proceed with consideration of the Bills in question until the third reading stage, at which time procedural arguments should be brought forward if the circumstances warranted further consideration.

Less than one year later, Speaker Lamoureux was again faced with an identical situation which he resolved by stating, in part, on February 24, 1971, at page 3712 of *Hansard*:

There is ... nothing procedurally wrong in having before the House, at the same time, concurrent or related Bills which might be in contradiction with one another either because of the terms of the proposed legislation itself or in relation to proposed amendments.

Mr. Speaker Lamoureux ruled that the second reading motion of the Bill could proceed as the House was not giving final approval to the Bill.

On February 5, 1973, Mr. Deputy Speaker McCleave, in deciding upon a similar conflict concerning the third reading of the unemployment insurance Bill and an appropriation Bill, reviewed the history of events with regard to Bills amending Bills in the same session. Mr. Deputy Speaker McCleave made an interesting observation which I believe is applicable to our situation when he said, in part, on page 974 of *Hansard*:

... [In 1958] bills to amend the Excise Tax Act and the Customs Tariff were being considered, and, while no decision was made by the Chair, it would be fair to suggest ... that it was felt at that time that it was not a question of order but rather a matter of how best to achieve logical progression of companion or interdependent bills through the House.

Mr. Deputy Speaker McCleave ruled that the debate should proceed on the third reading motion on the unemployment insurance Bill.

Having now reviewed with honourable Members the available precedents, I must declare that the practice of one Bill amending another Bill still before the House or not yet given Royal Assent is an acceptable one.

However, if at third reading, circumstances exist whereby the Bill is amending another Bill still before the House, then I would be disposed to abide by Speaker Lamoureux's decision and hear further argument at that time.

There were other issues raised during the procedural debate on Bill C-130 that I will define as side issues but worthy of comment. The honourable Member for Essex—Windsor (Mr. Steven Langdon) expressed concern about the administrative provisions in the Bill which are not covered in the Ways and Means motion.

Standing Order 84(11) states that “The adoption of any Ways and Means motion shall be an order to bring in a Bill or Bills based on the provisions of any such motion.” Several Speakers have made it clear that the critical words are “based on” and that it does not mean “identical to”. On those occasions, the Speakers have cautioned the House that “the terms of the Ways and Means motion are a carefully prepared expression of the financial initiative of the Crown and frequent departures from them can only invite deterioration of that most important power”. See *Journals* of December 18, 1974, p. 224.

The honourable Member for Ottawa—Vanier referred to the opportunity to vote on the separate provisions of the Bill. I must tell him that he is anticipating both the committee and the report stage of the Bill and I am grateful to him for reminding both the House and the Minister of the Speaker’s role at the Report Stage. The honourable Member also suggested that a larger Legislative Committee ought to be appointed in relation to this Bill. That may indeed be desirable, but this is a matter clearly within the scope of the powers of the Striking Committee on which the honourable Member sits.

Finally, some honourable Members raised the issue of the constitutionality of Bill C-130. On this point, I can only refer honourable Members to Citation 240 of *Beauchesne* Fifth Edition, which reads:

The Speaker will not give a decision upon a constitutional question nor decide a question of law though the same may be raised on a point of order....

In conclusion, I wish to summarize my decision....

... Bill C-130 is indeed an omnibus Bill—it meets the definition as stated by the honourable Member for Windsor West in that it has a single purpose, while amending various statutes but without further guidance of the House and based on the practice to this day, it should be allowed to proceed without interference from the Chair;

... the title of the Bill can be amended to be explicit or to reflect the statutes contained therein at the committee stage;

... the matter of Bill C-130 amending Bills now before the House should be raised at third reading if the same situation still exists.

I do wish to thank all honourable Members who contributed to the procedural discussion. No doubt, the Chair will be taxed further as this Bill makes its way through the House, but I am deeply indebted to all Members for the

manner and the tone of the procedural discussion thus far. I hope honourable Members will accept that the Chair and others have striven mightily to ensure that all of the important points that were raised have been met and dealt with in this ruling. I regret that it has taken time, but the arguments presented were taken very seriously.

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1. *Debates*, May 18, 1988, pp. 15586-7.
2. *Debates*, May 19, 1988, pp. 15612-4.
3. *Debates*, May 24, 1988, pp. 15704-5.
4. *Debates*, May 30, 1988, pp. 15877-8.
5. *Debates*, May 30, 1988, p. 15881.
6. *Debates*, May 30, 1988, pp. 15879-92, 15905-17.
7. *Debates*, May 30, 1988, p. 15888.
8. *Debates*, June 1, 1988, pp. 15993-7.
9. *Debates*, June 1, 1988, pp. 15997-6000.
10. This Act may be cited as the *Energy Security Act*, 1982.

## THE LEGISLATIVE PROCESS

Omnibus Bills: admissibility; long titles

April 1, 1992

*Debates*, pp. 9147-9

**Context:** On March 30, 1992, Mr. David Dingwall (Cape Breton—East Richmond) rose on a point of order respecting Bill C-63, *An Act to dissolve or terminate certain corporations and other bodies*. Mr. Dingwall raised concerns over the Bill's omnibus nature which, in his view, involved six different proposals as it sought the dissolution or termination of various government agencies. Mr. Dingwall argued that the bill did not allow for Members to properly engage in a debate on the specific aspects of the Bill. He also stated that the long title of the Bill should have included reference to each of the organizations affected by name. After hearing comments from Members on both sides of the House, the Acting Speaker (Hon. Steven Paproski) took the matter under advisement.<sup>1</sup> On April 1, 1992, the Speaker rendered a decision which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Monday, March 30, 1992, the honourable Member for Cape Breton—East Richmond rose on a point of order relating to the omnibus nature of Bill C-63, *An Act to dissolve or terminate certain corporations and other bodies*. During consideration of this matter, the honourable Members for Kamloops (Mr. Nelson Riis), North Island—Powell River (Mr. Ray Skelly), Ottawa—Vanier (Mr. Jean-Robert Gauthier) and the Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper) also made contributions. The Chair is grateful for their interventions. I have reviewed the matter and am now in a position to rule on the procedural arguments made against this bill.

The purpose of this bill is to wind down six government corporations or agencies: the Canada Employment and Immigration Advisory Council, the Canadian Institute for International Peace and Security, the Economic Council of Canada, the International Centre for Ocean Development, the Law Reform Commission of Canada, and the Science Council of Canada. The honourable Member for Cape Breton—East Richmond has objected to this bill because it is asking parliamentarians to pronounce themselves on several important issues in one single question. He has argued that the bill lacks relevancy in so far as its substance is not linked to its long title, and argues further that it would be extremely difficult to debate six principles at second reading or to move amendments at report stage.

Before addressing each of the issues raised by the honourable Member, it would be useful to briefly review what an omnibus bill is. As I mentioned in my ruling of June 8, 1988, there is no precise definition for omnibus bills;<sup>2</sup> the most

exact definition the Chair could find and agree with is that given by the honourable Member for Windsor West, which is found at page 15880 of *Hansard* for May 30, 1988:

The essential defence of an omnibus procedure is that the bill in question, although it may seem to create or to amend many disparate statutes, in effect has one basic principle or purpose which ties together all the proposed enactments and thereby renders the bill intelligible for parliamentary purposes.

Clearly one of the purposes of omnibus bills is to group together multiple statutory amendments so that discussion in the House may be focused. As the Government House Leader (Hon. Harvie Andre) in his former role as opposition critic explained on March 1, 1982 at page 15482 of *Hansard* in relation to the Canada Post [Corporation] Bill:

... [Bill C-42] amended 14 other statutes to make them consistent with the new statute dealing with the post office. It is clear that grouping these is an aid, not a hindrance, to proper parliamentary discussion and decision.

Although omnibus bills are sometimes welcomed by both sides of the House, several objections have arisen to their use.

The honourable Member for Cape Breton—East Richmond identified a number of them. He argued that the long title of Bill C-63 should properly indicate the purpose of the bill—that is to say, the termination of specific agencies—by naming the affected acts, thus establishing the relevancy between the different sections of the bill. To illustrate the lack of relevance between the various sections of the bill, he quoted from Citation 626 of *Beauchesne* Sixth Edition:

Although there is no specific set of rules or guidelines governing the content of a bill, there should be a theme of relevancy amongst the contents of a bill. They must be relevant to and subject to the umbrella which is raised by the terminology of the long title of the bill.

In response, the Parliamentary Secretary to the Government House Leader argued:

The umbrella of this particular legislation was made very clear in the budget. It indicated very clearly that the government planned to dissolve or terminate a number of corporations and other bodies for a central theme, being the ability to cut government expenditures and, therefore, as much as possible relieve the burden on the Canadian taxpayer....<sup>3</sup>

As to the question of the long title, I wish to refer all honourable Members to my ruling of June 8, 1988 on page 16257 of *Hansard*:

A further point raised ... was the insufficiency of detail in the long title of the Bill because it does not list all of the statutes being amended therein.

Honourable Members might wish to consult [Driedger's] *The Composition of Legislation, Legislative Forms and Precedents* for information on this point. This work may not have the same weight as *Beauchesne* or *Erskine May*, but it is a respected authority in legislative drafting. On pages 153 and 154 there is an explanation of Canadian practice as it relates to long titles, which clearly demonstrates that every Act being amended need not be mentioned in the title and that the Canadian practice has evolved differently from British practice by the use of generic language. If honourable Members feel, however, that such a course is necessary, I suggest that they should proceed by way of amendment and not by a decision of the Speaker to reject the Bill.

The principal objections of the honourable Members for Cape Breton—East Richmond, Kamloops, and Ottawa—Vanier are that this bill espoused six principles dealing with disparate elements such as employment and immigration, ocean development, science policy, economic issues and so on. They contend that it would be difficult to debate the full complexities of the affected areas at second reading and to come to a single decision. To this general argument, we can turn to the reply of Speaker Lamoureux on January 23, 1969 at page 618 of the *Journals*:

The vote on second reading is less a vote on the principle of the bill and more a decision of the House to send the bill on for further consideration at subsequent stages of proceedings. If this interpretation is correct, it seems it should be even less difficult for honourable Members to vote either for or against the main motion, since such vote would not constitute either approval of, or opposition to, the principle of the several propositions contained in the omnibus bill.

In a lengthy ruling on May 11, 1977, Speaker Jerome brought greater explanation on pages 5522 to 5524 of *Hansard*:

... there can be no doubt that a motion containing two or more substantive provisions is quite distinct from a procedural motion or a motion which is generally described as having only the effect of dealing with the progress of a bill. The practice in respect of substantive motions has never been extended to those motions which relate to the progress of a bill. The use of the omnibus amending bill is well enshrined in our practices, and I really can find no reason to set aside my predecessor's very clear and resounding reasoning, or the practice. Nor can I find any authority which would support an order of the Chair at this second reading stage that the bill be divided....

This still leaves, as it has in the past every time this kind of argument has been put forward, some very deep concern about whether our practices in respect of bills do in fact provide a remedy for the very legitimate complaint of the honourable Member that a bill of this kind gives the government, under our practices, the right to demand one decision on a number of quite different, although related subjects....

I think an honourable Member of the House ought to have the right to compel the House to vote on each separate question....

Therefore, while I carefully guard the specific rulings on the contradiction between the principles of the bill and the motions that might be put forward until the actual stage arises, because we are speculating as to what the cases may be, it seems to me in advance that in a bill of this sort ... a Member ought to be able, if he wishes, to attempt through motions to delete under Standing Order 75(5) to isolate those sections which he feels ought not to be amended or that ought to be voted upon separately, without offending the principle of the bill. I think that would give the honourable Member and other honourable Members an opportunity that they should enjoy, to put their positions on the record, which I think ought to be known, and also to require others in the House to vote in respect of that position.

In the same vein, Speaker Sauvé also expressed her opinion on June 20, 1983 at page 26538 of *Hansard* in this manner:

Thus, although some occupants of the Chair have expressed concern about the practice of incorporating several distinct principles in a single bill, they have consistently found that such bills are procedurally in order and properly before the House.

The Speaker of the Canadian House of Commons has not been given any specific authority over the form or content of omnibus bills. From time to time, suggestions have been put forward by the Chair on how honourable Members may voice their positions on various sections of omnibus bills. As Speaker Jerome indicated, for example, report stage motions to delete certain clauses may be one way of proceeding.<sup>4</sup> As I stated on June 8, 1988 at page 16257 of *Hansard*:

Until the House adopts specific rules relating to omnibus bills, the Chair's role is very limited and the Speaker should remain on the sidelines as debate proceeds and the House resolves the issue.

In conclusion, under the circumstances I cannot accept the objections made to this bill to divide or set aside the progress of Bill C-63, *An Act to dissolve or terminate certain corporations and other bodies*.

I thank all honourable Members for their contribution.

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1. *Debates*, March 30, 1992, pp. 8987-95.
2. *Debates*, June 8, 1988, p. 16255.
3. *Debates*, March 30, 1992, p. 8992.
4. *Debates*, May 11, 1977, pp. 5522-4.

## THE LEGISLATIVE PROCESS

Omnibus Bills: admissibility; long titles

December 7, 1992

*Debates*, p. 14735

**Context:** On December 4, 1992, Mr. David Dingwall (Cape Breton—East Richmond) rose on a point of order concerning Bill C-93, *An Act to implement certain organization provisions of the budget tabled in the House of Commons on February 25, 1992*. Mr. Dingwall raised concerns about the omnibus nature of the bill which repealed 27 statutes and enacted a new statute and he asserted that the bill made major changes to public policy. He also stated that the long title of the bill should indicate by name the specific agencies involved and therefore the bill was not in order and should be withdrawn. After hearing representations from both sides of the House, the Speaker took the matter under advisement.<sup>1</sup> On December 7, the Speaker rendered his ruling which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I have a judgment to render. On Friday, December 4, 1992, the honourable Member for Cape Breton—East Richmond rose on a point of order relating to the omnibus nature of Bill C-93, *An Act to implement certain government organization provisions of the budget tabled in the House of Commons on February 25, 1992*. I would like to thank him for the succinctness of his presentation. I would also like to thank the Parliamentary Secretary to the Government House Leader (Mr. Jim Edwards) for his intervention.

I have reviewed the matter and am now prepared to rule on the point of order.

The purpose of Bill C-93 is to wind up and transfer or merge the functions, and in some cases the staff, of nine government organizations to other government agencies or departments, and provide for the continuation and ultimate dissolution of the Canadian Commercial Corporation.

The objections raised by the honourable Member were that the bill not only would wind up some agencies, but it would also make major changes to public policy with regard to the role of government. The House Leader of the Official Opposition stated that if properly drafted, the long title of the bill would indicate its purpose of terminating specific agencies by name, revealing what he felt was the real purpose of the bill. He also argued that it is an omnibus bill and ought to be sent back to the drafters to be divided.

These points are very similar to the arguments presented by the honourable Member for Cape Breton—East Richmond concerning the omnibus nature of Bill C-63, *An Act to dissolve or terminate certain corporations and other bodies*, on which I ruled on April 1, 1992.<sup>2</sup> As noted at that time, one of the purposes of

omnibus bills is to group together multiple statutory amendments so that discussion in the House may be focused. It was also pointed out that the Speaker has not been given any specific authority over the form or content of omnibus bills.

I would refer honourable Members to the ruling of April 1, 1992, which dealt in some detail with the very points raised on Friday last by the honourable Member for Cape Breton—East Richmond. The arguments presented in relation to Bill C-93, while put forward with skill, have not convinced me that the Chair should deviate from our practice. Accordingly, I must conclude that it would not be appropriate under these circumstances to accept the objections raised.

Therefore, the bill is properly before the House.

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1. *Debates*, December 4, 1992, pp. 14631-3.
2. *Debates*, April 1, 1992, pp. 9147-9.

## THE LEGISLATIVE PROCESS

Bill amending other bills presently before the House

November 28, 1991

*Debates*, pp. 5513-4

**Context:** On November 22, 1991, Mr. David Dingwall (Cape Breton—East Richmond) rose on a point of order regarding Bill C-35, *An Act to correct certain anomalies, inconsistencies, archaisms and errors in the Statutes of Canada*, which was before the House for consideration at report stage.<sup>1</sup> Mr. Dingwall stated that Part III of the Bill entitled “Bills introduced but not yet assented to” should be withdrawn since it referred to six bills which were in various legislative stages before the House. After hearing representations from Members who offered other suggestions, the Deputy Speaker (Hon. Andrée Champagne) stated that she could not unilaterally withdraw the section from the Bill and suggested that the House proceed to the concurrence motion at report stage and begin debate at third reading but that the question not be put until the Chair rendered its decision.<sup>2</sup> The House agreed to proceed in this manner and on November 28, 1991, the Speaker rendered his decision.

### DECISION OF THE CHAIR

**Mr. Speaker:** On Friday, November 22, 1991, as the House was about to begin the third reading debate on Bill C-35, *An Act to correct certain anomalies, inconsistencies, archaisms and errors in the Statutes of Canada*, the honourable Member for Cape Breton—East Richmond rose on a point of order related to that bill.

The honourable Member sought guidance from the Chair concerning Part III of the bill entitled “Bills introduced but not yet assented to” which puts forward amendments in relation to six bills that are at various stages in the legislative process.

Specifically, it proposes to amend under certain conditions Bill C-3, which received third reading in the House on Friday last, Bill C-4 which is on the *Order Paper* at third reading, Bill C-18 which is now before the Standing Committee on Finance, Bill C-19 which is on the *Order Paper* at third reading, Bill C-22 which is now before the Standing Committee on Consumer and Corporate Affairs and Government Operations and Bill C-26 which awaits second reading in the House.

The Chair wishes to thank the honourable Member for Cape Breton—East Richmond, the honourable Member for Kamloops (Mr. Nelson Riis) and the Parliamentary Secretary and the honourable Member for Cariboo—Chilcotin (Mr. Dave Worthy) for their interventions last Friday and for their cooperation in permitting debate to commence, pending the Chair’s decision on this matter. I am now ready to render a decision.

This is not the first time that Members have raised concerns about a bill before the House appearing to be dependent on other bills still under consideration. On June 8, 1988, the Chair reviewed precedents on the subject, notably the decisions of Speaker Lamoureux of April 20, 1970 and February 24, 1971 as well as Deputy Speaker McCleave's ruling of February 5, 1973.<sup>3</sup>

Speaker Lamoureux had found nothing procedurally wrong in having before the House at the same time concurrent or related bills which might be in contradiction with one another either because of the terms of the proposed legislation itself or in relation to proposed amendments. Accordingly, he ruled that second reading motions could proceed as the House was not giving final approval to the bills in question.

Today, however, the House is faced with giving its final approval to Bill C-35 and the Chair must determine whether third reading of Bill C-35 can proceed when Part III of that bill amends six bills now at various stages of the legislative process.

In its careful review of the terms of Part III of Bill C-35, the Chair has examined testimony presented before the Standing Committee on Justice and the Solicitor General on November 19, 1991, when Members sought clarification on the intent of Part III from the officials of the Department of Justice.<sup>4</sup>

Let me first say that I was dismayed to find in that exchange that a ruling of June 8, 1988, has been misconstrued as *carte blanche* for an interdependent approach to drafting complex legislation with the committee being told: "the Speaker ruled in 1988 that the inclusion of these clauses was perfectly proper".

A close reading of the June 1988 ruling reveals rather that the Chair permitted second reading of Bill C-130 to proceed despite objections raised to conditional references to Bill C-60 and Bill C-110. As it happens, events overtook those bills. No objections were raised at third reading of Bill C-130 and on dissolution Bills C-60 and C-110 had been assented to while the free trade bill died on the *Order Paper*.

I want to make it very clear that the situation before us where objections of this sort have been raised at third reading is according to our research unprecedented.

In the ruling of June 8, 1988, the Chair declared "the practice of one bill amending another bill still before the House or not yet given Royal Assent is an acceptable one". However, in keeping with the earlier warnings of Speaker Lamoureux, the Chair went on to caution that "if at third reading, circumstances exist whereby the bill is amending another bill still before the House, then I would be disposed to abide by Speaker Lamoureux's decision and hear further argument at that time".

This is precisely the situation before us today.

Having carefully examined the terms of Part III of Bill C-35, the Chair has grave concerns about this manner of proceeding since taken to the extreme it puts the House in the invidious situation of legislating in the subjunctive. For example, clause 157 of Bill C-35 proposes an amendment to Bill C-3 which is intended to deal with an anticipated anachronism. It amends the definition of department in Bill C-3 which rests currently on a reference to provisions in the *Financial Administration Act* which provisions are being amended by Bill C-35.

If the definition now in Bill C-3 remains and Bill C-35 is assented to without clause 157, Bill C-3 would even on being assented to contain an anachronistic reference to the *Financial Administration Act*.

That being said, the Chair has some sympathy for the dilemma facing those drafting proposals for the *Miscellaneous Statute Law Amendment Act*. Testimony before the committee reveals that this is an ongoing and painstaking process and that the very length of the process militates in some measure against its success as a comprehensive exercise. At the time such a bill is enacted, other legislation being considered concurrently by Parliament may require consequential amendments of the kinds included in Part III of Bill C-35. In the case of Bill C-35, and this is a key consideration for the Chair, the House is considering the traditional omnibus bill for corrections to certain anomalies and inconsistencies.

The drafters of Bill C-35 have in their zeal placed before the House not only corrective measures for such matters identified in existing statutes but in Part III they propose corrective measures for matters which will in all likelihood come into existence in this parliamentary session. Do these proposals offend the procedures of the House of Commons?

It is the duty of the Chair to safeguard the right of Members and the House to make fully informed decisions on the matters before it and in the final analysis the Chair must be guided by what Deputy Speaker McCleave described in 1973 as a matter of how best to achieve the logical progression of companion or interdependent bills through the House.

The legislative process affords ample opportunity for amending proposed legislation during the detailed clause by clause study in committee and again at the report stage in the House.

In the case of Part III of Bill C-35, Members could have voted against or moved to delete any or all of the six clauses in question. Now at third reading the House has a final opportunity, should it so choose, to recommit Bill C-35 to committee for reconsideration.

Alternatively, the House could decide not to proceed with third reading of Bill C-35 until the six bills touched on in Part III have completed the legislative process.

All of these avenues offer Members full remedy to this conditional approach to legislating should they object to it. That decision rests with the House.

After careful reflection on the technical nature of the amendments and their effects and on the opportunities there have been and continue to be for the House to reject Part III of Bill C-35, the Chair is not inclined to intervene on procedural grounds in this instance. Accordingly the Chair rules that Part III of Bill C-35 is properly before the House and third reading of Bill C-35 can proceed.

I want to add to these comments of the honourable Member for Cape Breton—East Richmond that the point that has been raised is not an easy one. I hope that this is of some assistance to the House. It is a complicated matter and as I mentioned in the judgment, this approach is not altogether satisfactory and I have had to [do] the best I can with a very difficult situation. I thank the honourable Member for Cape Breton—East Richmond for bringing the matter to the attention of the Chair.

*Postscript: On February 6 and 7, 1992, the House resumed third reading debate on the Bill, and on February 7, 1992 the Bill was read a third time and passed. It was passed by the Senate, and subsequently received Royal Assent, and came into force, on February 28, 1992. Four of the bills listed in Part III of Bill C-35, namely, Bills C-3, C-4, C-18 and C-19 had received Royal Assent by the time Bill C-35 was assented to. However, Bills C-22 and C-26 were not assented to until June 23, 1992 and December 17, 1992, respectively.*

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1. *Debates*, November 22, 1991, pp. 5236-46.
2. *Debates*, November 22, 1991, pp. 5238-9.
3. *Debates*, June 8, 1988, pp. 16252-8; April 20, 1970, pp. 6047-8; February 24, 1971, p. 3712; February 5, 1973, pp. 974-5.
4. *Minutes of Proceedings and Evidence of the Standing Committee on Justice and the Solicitor General*, November 19, 1991, Issue No. 13.

## THE LEGISLATIVE PROCESS

Motion for the appointment of a day for second reading

May 24, 1988

*Debates*, pp. 15722-3

**Context:** On May 24, 1988, following a recorded division on the motion for the first reading of Bill C-130 respecting the Canada-United States Free Trade Agreement, Mr. Nelson Riis (Kamloops—Shuswap) rose on a point of order regarding the appointment of a day for second reading of a bill. Mr. Riis argued that the question put to the House by the Speaker, "when shall the Bill be read a second time," to which the House generally agrees "at the next sitting of the House," is a votable motion on which the House may divide. In a detailed argument in which he cited past practice, Mr. Riis also argued that the motion was both debatable and amendable.<sup>1</sup> Following comments by other Members,<sup>2</sup> the Speaker ruled immediately. The text is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** First, I want to make it clear to honourable Members exactly what has occurred here. The Honourable Minister of State (Mr. Doug Lewis) has pointed out that there was a vote on concurrence on the matter of the trade Bill and today there were two further votes, one for the introduction of the Bill and a second for first reading.

It is also quite accurate that in the first vote the Chair gave what I could refer to as the benefit of the doubt to the Opposition in the interest of order in this place and in the interest of effective procedures. However, I think I pointed out that that was not necessarily a precedent.<sup>3</sup>

The honourable Member for Kamloops—Shuswap has raised a matter that I must say had not gone unnoticed by the Chair some days ago. Therefore, I have had a chance to consider it with care. Let me say, however, and with some degree of admiration, that the argument put forward by the honourable Member for Kamloops—Shuswap was thorough and rooted deep in history. It was succinct and a credit to the honourable Member, and of assistance to other honourable Members who wish to respond to it.

The honourable Member for Windsor West (Mr. Herb Gray) has added somewhat to that argument and I am indebted to him for his remarks. Of course, I appreciate the comments of the honourable Minister of State.

I was able to scribble a few notes during the noon break, I believe in anticipation of most of the argument of the honourable Member for Kamloops—Shuswap. I shall refer partly to these notes in the interest of clarity.

First, I might say that the honourable Member for Kamloops—Shuswap has raised a matter which one could say has rarely been raised in many, many years. I should point out to the honourable Member that while I have looked carefully at the passage in *Bourinot*, the cases upon which that passage is based go back well over 100 years. The honourable Member for Kamloops—Shuswap has made that very clear.<sup>4</sup>

When I say that it has rarely been raised in many, many years, it is because I have not been able to find any instance of it being raised, save one single instance a few years ago. I bring that to honourable Members' attention.

This occurred on January 19, 1984, when Speaker Francis was in the chair. He was responding to a matter raised by the then honourable Member for Yukon (Hon. Erik Nielsen). He commented on some argument that had been put forward. He then went on to say, with respect to Citation 722 of *Beauchesne* [Fifth Edition], which, as honourable Members will remember, takes a different position from the *Bourinot* citation of many years before:

The Chair has, however, relied on Citation 722 of *Beauchesne*, which reads:

I am now quoting what was read by Speaker Francis:

Appointment for Second Reading

When the House has agreed to the first reading of a bill, the Speaker at once proceeds to ask: "When shall the bill be read a second time?" The answer is generally: "At the next sitting of the House." The bill is placed on the *Order Paper*, in its proper place, for a second reading at a future time. It is purely formal and is proposed with the object of placing the bill on the agenda for a second reading at which time all discussion can more regularly and conveniently take place.<sup>5</sup>

I quote that not to say that it is an observation with extensive reasoning to it. It is not. However, it is the only citation that I have been able to find which indicates in contemporary times what any Speaker of this place has thought with respect to the distinction between *Bourinot* and *Beauchesne*. There at least is some guidance. Clearly, Speaker Francis at that point is making the point that the procedure is purely a formal one.

The honourable Member for Kamloops—Shuswap made several observations in the course, as I said, of his excellent argument in which he said that just because this practice as enunciated by *Bourinot* has not been followed for many decades is no particular reason that it ought not to be followed today.

I am reminded of Dean Swift when he said that lawyers are a race of men among us who believe that anything that has been done before may legally be done again. I think it is always important not to get caught up in that adage too closely.

However, certainly the honourable Member for Kamloops—Shuswap starts off on sound ground because he cites precedents. I have not been able to go back to look at those precedents in the context. What I think is common ground here is that whatever the practice may have been then, and I think that the honourable Member for Kamloops—Shuswap acknowledged this, as he said, it has fallen into disuse. He also said that there is no precedent that extinguishes the right of a Member to force a division or, indeed, to go on to proceed during a debate and then to amendment.

It would seem, at least at the moment, that what the honourable Member says is so. However, the difficulty of the Chair in a case such as this is that if a practice has so fallen into disuse that it is not in the minds and in the contemplation of Members on either side of the House when the particular form—and that is of course what *Beauchesne* says it is—is followed, then the question is whether it is a better course of wisdom for the Speaker to reach back too far to pick something out of the mists of time to say that suddenly, without any particular expectation, it applies. I must say that that is a practice that I would not want to take part in unless I had some very clear direction from all sides of the House that, indeed, some ancient practice ought to be reinstated and ought to be part of the consideration of the House at all times.

I have to say to the honourable Member for Kamloops—Shuswap that to proceed to take the *Bourinot* quote and apply it, to leap-frog it, if I can put it that way, chronologically, ahead of and in a position of greater importance than the *Beauchesne* quote, especially when we have at least a nod toward *Beauchesne* on the part of a recent Speaker of this House, would not be in the interests of procedural wisdom in this place.

However, it is one of those arguments which is of great interest. It may well be that honourable Members may wish to discuss it further. It may well be that honourable Members might want to agree together that some change may be made. In the absence of a very clear direction from this House I do not think it would be appropriate today under these circumstances to apply what may well be a ruling that was appropriate over 100 years ago to the matter that is in front of us today.

I thank very much the honourable Member for Kamloops—Shuswap and those who may have assisted him in his argument. I thank the honourable Member for Windsor West, and I thank the honourable Minister of State.

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1. *Debates*, May 24, 1988, p. 15706.
2. *Debates*, May 24, 1988, pp. 15719-22.
3. *Debates*, May 24, 1988, pp. 15704-5.
4. *Bourinot*, 4th ed., p. 508.
5. *Debates*, January 19, 1984, p. 564.

## THE LEGISLATIVE PROCESS

Public Bills: committee amendments, receivability of report stage amendments adopted in committee, receivability of report

April 28, 1992

*Debates*, p. 9801

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**Context:** On April 28, 1992, just as the House was to begin consideration at report stage of Bill C-54 respecting the Farm Products Marketing Agencies, Mr. Vic Althouse (Mackenzie) rose on a point of order concerning the admissibility of three of the amendments to the Bill which had been adopted in committee.<sup>1</sup> The three amendments were ruled out of order by the chairman of the committee, as two of the amendments sought to amend the parent act and a third went beyond the scope of the Bill, but the chairman's decisions were overturned by the committee. Mr. Althouse argued that the committee exceeded its power and requested that the Speaker rule the report irreceivable or strip the amendments from the Bill before the House proceeded any further. After hearing comments from other Members,<sup>2</sup> the Speaker ruled immediately. The text is reprinted in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** This morning the Chair heard from the honourable Member for Mackenzie on the admissibility of certain amendments made in committee on Bill C-54, *An Act to amend the Farm Products Marketing Agencies Act and other Acts in consequence thereof*. I indicated at the time that I would return this afternoon to render a decision on the matter. I am now prepared to deliver that decision.

Before I begin, I wish to take this opportunity to thank the honourable Members for Mackenzie, Algoma (Mr. Maurice Foster), Elgin—Norfolk (Mr. Ken Monteith) and Prince Edward—Hastings (Mr. Lyle Vanclief) for their submissions on this point of order.

To briefly outline the matter: the Standing Committee on Agriculture to which Bill C-54 was referred, reported the bill with amendments on April 6, 1992. Two of the amendments reported by the committee had been ruled out of order by the chairman on the grounds that they attempted to amend sections of the parent act not contained in the bill. The decision of the chairman was appealed and overruled and the committee adopted the amendments in question. Another amendment to clause 10 was ruled beyond the scope of the bill and again the chairman's ruling was overturned by the committee and the amendment was carried.<sup>3</sup>

The crux of the matter now before the Chair is whether the committee exceeded its powers and went beyond its order of reference, the bill itself. This is the last question which the honourable Member for Mackenzie has put in his point of order.

When a bill is referred to a standing or legislative committee of the House, that committee is only empowered to adopt, amend or negative the clauses found in that piece of legislation and to report the bill to the House with or without amendments. The committee is restricted in its examination in a number of ways. It cannot infringe on the financial initiative of the Crown, it cannot go beyond the scope of the bill as passed at second reading, and it cannot reach back to the parent act to make further amendments not contemplated in the bill no matter how tempting this may be.

In some cases, this last cardinal rule is graphically clear. For instance, if a committee is examining a Criminal Code bill dealing with lotteries, a Member cannot reach back to the parent act to propose amendments for those sections dealing with firearms. In certain other cases, this principle is more difficult to explain.

In the present case, two amendments were proposed to sections 17(1)(e) and 17(2)(e) and 34(1) of the *Farm Products Marketing Agencies Act*.

These sections of the act were not part of Bill C-54, hence it was not in order to propose these additions in the bill pertaining to these sections of the act.

A third amendment to clause 10 went beyond the scope of the bill as it attempted to broaden the application of the bill to other farm products not contemplated by this bill.

Just as the chairman of the standing committee ruled these amendments out of order, I must also rule that all three amendments are inadmissible for the same reasons the chairman expressed in committee.

In cases in which the Chair is asked to rule on the admissibility of committee amendments to bills, any modifications which offend a basic principle in the legislative process are struck from the bill. This was the practice followed by Speaker Jerome on April 23, 1975 in relation to Bill C-44, *An act to amend the Senate and House of Commons Act, the Salaries Act and the Parliamentary Secretaries Act*, and by Deputy Speaker Francis on April 7, 1981 in relation to Bill C-42, *An Act to establish the [Canada] Post Corporation*.<sup>4</sup>

Consequently I must rule that the inadmissible amendments adopted by the Standing Committee on Agriculture to new clause 9, new clause 10, and clause 10 of Bill C-54 be declared null and void and no longer form part of the Bill as reported to the House.

Again I thank honourable Members for their contributions.

**Postscript:** By unanimous consent, later that day, the amendments in question were agreed to by the House.<sup>5</sup>

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1. *Debates*, April 28, 1992, p. 9753.
2. *Debates*, April 28, 1992, pp. 9753-4.
3. *Minutes of Proceedings and Evidence of the Standing Committee on Agriculture*, March 31, 1992, Issue No. 35, pp. 38-43.
4. *Debates*, April 23, 1975, pp. 5115-6; April 7, 1981, p. 9052.
5. *Debates*, April 28, 1992, p. 9802; *Journals*, April 28, 1992, pp. 1326-7.

## THE LEGISLATIVE PROCESS

Public Bills: bills, blank or imperfect shape

January 26, 1987

*Debates*, pp. 2665-8

**Context:** On January 23, 1987, the Hon. Herb Gray (Windsor West) rose on a point of order concerning Bill C-37 respecting softwood lumber. Although debate at second reading was already underway, Mr. Gray argued that the Bill should not have been introduced as it was, in that it contravened the Standing Orders which stated that no Bill may be introduced in a blank or imperfect shape. The Bill contained a reference to a document entitled "Memorandum of Understanding" stating that this document was tabled in the House on January 19, 1987, when in fact the document had not yet been tabled. The Bill also contained a blank as it referred to a sessional paper number relating to the document in question, which was not available as the document had not been tabled. Mr. Gray asked the Speaker to declare the debate at second reading a nullity and stated the Government should be required to reintroduce the Bill. Other Members suggested that since the Memorandum of Agreement had not yet been tabled, consequently the Bill was not complete and certain information relating to the content of the Bill not available. Acknowledging that an error had taken place, the Speaker heard comments from various Members and directed them to address the question of what prejudice the public interest or Members had suffered as a result of this error. The debate proceeded at great length and the Speaker eventually took the matter under consideration.<sup>1</sup> On January 26, the Speaker rendered his ruling which is reproduced in its entirety below.

### DECISION OF THE CHAIR

**Mr. Speaker:** Before I call Orders of the Day, I have a ruling to make arising out of the debate which occurred on Friday, January 23, 1987. The honourable Member for Windsor West rose on a point of order to argue that violence had been done to Standing Order 108 in Bill C-37, *An Act respecting the imposition of a charge on the export of certain softwood lumber products*.

Standing Order 108 reads as follows:

No bill may be introduced either in blank or in an imperfect shape.

The honourable Member for Windsor West referred to Subclause (3) of Clause 2 of the Bill in which the Memorandum of Understanding is clearly mentioned establishing the relationship between this Bill and the Canada-U.S. Agreement. The honourable Member complained particularly of lines 11, 12 and 13 at page 2 of the Bill where reference is made to the tabling of the Canada-U.S. memorandum on softwood products as having been made on January 19, 1987, and recorded as a Sessional Paper, the number of which is omitted in the Bill. He

subsequently submitted that debate on the Bill should be deemed a nullity and that the Government should be required to reintroduce the Bill and commence the debate and its proceedings all over again.

The honourable Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council (Mr. Doug Lewis) admitted that the Memorandum of Understanding had not been tabled as had been originally intended and conceded that a clerical error had been made. He suggested that the correction of the date of the tabling and the insertion of the proper Sessional Paper number in Clause 2 could be made by way of amendment at committee stage. The honourable Parliamentary Secretary argued that the date of the tabling of the Memorandum of Understanding and the absence of the Sessional Paper number did not go to the essence of Bill C-37.

The honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier) maintained that because there was a blank in line 12 on page 2 of this Bill, this made the Bill entirely unacceptable, according to Standing Order 108, and that consequently, the Government should withdraw the faulty Bill and present an amended version with the correct date and the correct numbers of related documents.

The honourable Member for Humboldt—Lake Centre (Mr. Vic Althouse) and the honourable Member for Churchill (Mr. Rod Murphy) referred the Chair to a previous Speaker's ruling on the drug patent Bill which occurred in June 1986 when the Speaker refused to propose the question on the introduction of the said Bill because the Royal Recommendation which was required in that case had not been secured.<sup>2</sup> They drew the analogy that, not having gone through the proper procedures, Bill C-37 ought to be rejected in the same manner.

The honourable Member for Winnipeg—Fort Garry (Mr. Lloyd Axworthy) and the honourable Member for Spadina (Mr. Dan Heap) claimed that since the Memorandum of Understanding is essential to the functioning of the law, Bill C-37 is defective because the said Memorandum of Understanding is not contained therein. The honourable Deputy Prime Minister and President of the Privy Council (Mr. Don Mazankowski), in his presentation, attempted to define an imperfect Bill. He stated that a blank Bill would be imperfect. He submitted that failure to outline the principles of a Bill or details pertaining to the principles of a Bill could render a Bill void, but that in the present case the House is faced with "simply a slight technicality that can be easily changed".

The honourable Member for York South—Weston (Mr. John Nunziata) contended that because of the wrong date and the omitted document number, Bill C-37 is flawed, that the flaw is fatal, that the proceedings thus far are irregular and that the Bill and the debate thereon should be ruled void *ab initio*.

The Parliamentary Secretary to the Minister of Transport (Mr. David Kilgour) countered that no Bill was perfect in itself and that Bill C-37 was sufficiently complete to be adopted on second reading and referred to a committee, where it could be improved. He added that no Members had been prejudiced by this and that the Chair should decide to let the debate continue.

The honourable Member for Western Arctic (Mr. Dave Nickerson) referred to a ruling of the Chair in the previous Parliament which can be found at *Hansard*, page 5139, of June 26, 1984. At that time there were blanks in copies of the printed Bill in the hands of honourable Members but, as the Deputy Speaker informed the House, there were no blanks in the House copy filed with the Table at the time of introduction. Therefore, that particular case is unfortunately of little guidance since there was in fact a blank in Bill C-37 when it was introduced on January 19 last.

At this point, it might be desirable to relate what proceedings have transpired so far on Bill C-37.

On January 19, 1987, during Routine Proceedings, the honourable Minister for International Trade (Miss Pat Carney) tabled a Notice of Ways and Means motion relating to the Canada-U.S. softwood lumber Memorandum of Understanding and asked that a day be designated for its consideration pursuant to Standing Order 84(1) and 84(2). At three o'clock p.m. the same day, by unanimous consent so as to waive the restrictions of Standing Orders 84(1) which prevent the consideration of such motions on the same day they are tabled, the said motion of Ways and Means was concurred in on recorded division.

Bill C-37, the *Softwood Lumber Products Export Charge Act*, was introduced and read the first time, again by unanimous consent so as to waive the notice prescriptions of the Standing Orders. A Royal Recommendation duly signed by the Governor General was properly attached to the Bill.

The House gave unanimous consent once again to proceed forthwith with the consideration of the second-reading motion, thereby suspending Standing Order 111(1) which stipulates that the three several readings of a Bill shall occur on separate sitting days. During the debate on the same day, the Right Honourable Leader of the Opposition (Mr. John Turner) moved a six-month hoist amendment to the second-reading motion. On Thursday, January 22, the question was put on the amendment and it was negatived on a recorded division.

The Parliamentary Secretary to the Minister for International Trade (Mr. John McDermid) subsequently moved the previous question, namely: "That the question [be now] put."

That is where we were after four days of debate on the motion for second reading of Bill C-37, and it was at this point that the honourable Member for Windsor West raised his point of order.

In arriving at a decision the Chair has reviewed all of the arguments and I will attempt to deal with most of them. I have already told the honourable Member for Western Arctic that the precedent he alluded to, while similar in its content, was of little guidance because the official copy of the Bill he referred to did not contain blanks at the time of introduction in June of 1984. I thank him nevertheless for his comments.

The honourable Member for Churchill and the honourable Member for Humboldt—Lake Centre make reference to the June, 1986 drug patent Bill and I must say that that precedent is not quite on point either. If the Speaker ruled, as he did in June, 1986, it was not because of Standing Order 108 but because of Standing Order 86(2) which requires that the Royal Recommendation be annexed to every Bill which requires one. Bill C-37 had, on January 19, 1987, a Royal Recommendation properly attached to it.

The honourable Member for Winnipeg—Fort Garry and the honourable Member for Spadina made reference to the fact that the Memorandum of Understanding is not contained in the Bill. I refer them to a ruling made on May 17, 1956 which established that it was not necessary to include agreements in Bills providing for the carrying into effect of those agreements.<sup>3</sup> The Speaker referred the House to Chapter 71 of the Statutes of 1948, *An Act to provide for the carrying into effect of treaties of peace between Canada and Italy, Romania, Hungary and Finland*, in which none of the agreements was inserted in the Bill.

After resolving these two important points, the Chair still has to deal with what was said by the honourable Members for Windsor West, Ottawa—Vanier and York South—Weston with respect to Standing Order 108 and their statement that Bill C-37 was a Bill in blank and in an imperfect shape owing to lines 11 and 12 on page 2 of said Bill.

My predecessors have been very diligent in the past in ruling blank Bills out of order. These Bills were usually Private Members' Bills introduced and read a first time and subsequently found to have only a title and for which no text existed or had been finalized. I refer honourable Members to a ruling of Speaker Jerome on May 16, 1978, at page 5461 of *Hansard*, and more particularly to a ruling of Speaker Sauvé who, on December 15, 1980, declared the proceedings relating to Bill C-622 null and void. She said the following and I quote from page 5746 of *Hansard*:

... while the document with respect to the motion was prepared, the bill itself had not been drafted and, therefore, was not ready for introduction.

Standing Order 69 is very clear:

No bill may be introduced either in blank or in an imperfect shape.

It seems that Standing Order 108 was very clear to Speaker Sauvé and the Bill in blank shape meant simply a Bill with only a title or only partially drafted.

The aforementioned references are cited to establish the difference between a Bill in blank shape and a Bill containing a blank. In the opinion of the Chair, Bill C-37 is not a blank Bill according to our practice and previous Speakers' rulings, but without doubt, as was so ably demonstrated by the honourable Member for Gander—Twillinge (Mr. George Baker), Bill C-37 does contain a blank. It also contains an error, namely, the reference to the tabling of the Memorandum of Understanding on January 19, 1987. Having come to the conclusion that what we are dealing with are errors or anomalies in this Bill, the Chair must decide whether these errors render the Bill imperfect in relation to Standing Order 108.

On September 24, 1985 the President of the Privy Council (Hon. Ray Hnatyshyn) sought the unanimous consent of the House to correct errors in Bill C-75, *An Act to amend the Canada Shipping Act*, which had been introduced earlier, and stated that a new Royal Recommendation had been obtained accordingly.<sup>4</sup> The House gave its consent. While there was no ruling from the Chair, it was obvious at the time that the errors in Bill C-75, which omitted in its title and text as well as in the Royal Recommendation, references to the *Oil and Gas Production and Conservation Act*, were so grave as to render the Bill imperfect. Because the errors were fundamental to Bill C-75, only two recourses were available to the Minister, either obtain consent to correct the errors or start again.

The Chair has reviewed the errors at page 2 of Bill C-37 and the arguments surrounding them, including those of the Deputy Prime Minister and his Parliamentary Secretary. I have concluded that the two mistakes do not affect the essence, the principles, the objects, the purposes or the conditions of Bill C-37. The Chair is also satisfied that the terms of the Royal Recommendation are not affected or altered.

However, the matter cannot lie there. This point of order has taken up much of the House's time, indeed a full sitting day. The House might allow me to add that it has preoccupied your Speaker over the past weekend.

In seeking a solution I was inspired by the ruling of May 17, 1956, which I referred to earlier. In elaborating on the first reading procedure Speaker Beaudoin said:

[...] at [the] moment the honourable Member cannot raise [a] point of order because he does not have a copy of the bill. The bill has not been printed.... My satisfaction must be made on a very summary basis because honourable Members cannot expect the Speaker to study every bill in an effort to find whether or not something has been omitted. Honourable Members have taken care of that situation themselves by insisting in their procedure that after second reading all bills be referred ... to one of their standing committees or to the Committee of the Whole [...]

*Beauchesne* Fifth Edition at page 79, Citation 238, says:

When a bill is under consideration, points of order should not be raised on matters which could be disposed of by moving amendments.

The errors in Bill C-37 could indeed be corrected by an amendment in committee, but it seems to the Chair a rather cumbersome solution to correct what is essentially a minor error or oversight.

Pursuant to Standing Order No. 1, I have reviewed the practice in the United Kingdom and in the Lok Sabha of India and found the following. At page 493 of the *Practice and Procedure of Parliament*, Third Edition, edited by Kaul and Shakdher it is stated:

No alteration can be made in a Bill as introduced or as reported by a Select or Joint Committee except by way of an amendment adopted in the House. However, the Speaker has the power to correct any obvious printing or clerical error at any stage of a Bill by issue of a corrigendum to the Bill....<sup>5</sup>

In the Twentieth Edition of *Erskine May* at pages 377, 383 and 526 the Speaker of the House of Commons at Westminster is given considerable latitude in altering minor errors in motions and bills.

Therefore, I hereby order the Clerk of the House to alter the House copy of Bill C-37 as follows:

lines 11, 12 and 13 shall be struck from the Bill, line 10 shall be altered by adding a period after the words “December 30, 1986” and by striking out the word “and”.

By doing this the incorrect tabling date and blank document number are removed from the Bill. However, that part of subclause 2(3) which allows for recourse to the Memorandum of Understanding in interpreting the schedule remains. The alteration being made is therefore not one of substance but one which will correct the errors complained of. The Law Clerk and Parliamentary Counsel shall also reprint the Bill accordingly, including an explanatory note referring to this ruling and the above-mentioned alterations ordered by the Chair.

This is not an innovation on the part of the Chair, for Speaker Jerome on April 23, 1975 ordered certain amendments made in committee, stripped from a Bill, and ordered a reprint of the Bill. Members may wish to consult [*Journals*], page 469 of that day.

In closing, I wish to add a few comments on clerical errors and oversights, for I do not necessarily take them to be of little significance. This error has been the subject of a full day’s debate; it has now caused the reprint of a Bill at considerable expense. It has preoccupied Members on both sides of the House for several days, and has been of grave concern to your Speaker. No doubt this error will continue to be a point of some controversy. Let not those responsible for it be confident that in the future this ruling may be used to cure their mistakes. It is possible that a clerical error can affect the fundamental principles of fair play that govern

parliamentary proceedings and debate. This ruling addresses the clerical error in Bill C-37 only. Future such clerical errors will have to be assessed with regard to their impact on the draft legislation before the House, and the consequences that will flow therefrom.

Let there be no misunderstanding. This kind of error can affect the rules of fair play that govern our proceedings. This ruling corrects only the anomaly in Bill C-37. In future, such errors will have to be considered in terms of their impact on the proposed legislation before the House and the consequences that may result.

Accordingly, debate on the second reading of Bill C-37, as altered by the Speaker, will proceed.

I wish to thank all honourable Members for their contribution to the debate on Friday, which the Chair took as extremely serious. I hope that the comments in this ruling will make it very clear that if mistakes are made this is not a ruling to be looked to with much comfort for the correction of those mistakes, and as a precedent it must be viewed in its most narrow and factual form.

Again, I thank all honourable Members for their conduct during what was a very difficult question, a question that touches on the rights of all Members, and especially what must be accepted and understood in our parliamentary tradition, that the rules of procedure are very important to the conduct of this place.

**Postscript:** *On January 23, 1987, during the intervening period between discussion on this point of order, the Government tabled, during Routine Proceedings, the Memorandum of Understanding in question. However, the Speaker later ruled that the incorrect tabling date and the sessional paper number be deleted from the Bill. These references were not part of the Bill as assented to on May 28, 1987.*

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1. *Debates*, January 23, 1987, pp. 2634-48, 2651-5.
2. *Debates*, June 27, 1986, p. 15008.
3. *Debates*, May 17, 1956, p. 4021.
4. *Debates*, September 24, 1985, p. 6943.
5. M. N. Kaul and S.L. Shakdher, *Practice and Procedure of Parliament*, 3rd ed. (New Delhi: Metropolitan Book Co. Pvt. Ltd., rpt. 1986).

## THE LEGISLATIVE PROCESS

Public Bills: tabling of report stage; admissibility of amendments

August 15, 1988

*Debates*, pp. 18306-9

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**Context:** On August 15, 1988, as the House was resuming debate at report stage of Bill C-130 respecting the Canada-United States Free Trade Agreement, the Speaker gave his final ruling concerning the grouping and selection of the report stage motions. Following this ruling, which involved 102 motions, the Hon. Lloyd Axworthy (Winnipeg—Fort Garry) rose on a point of order concerning certain motions. He argued a ruling previously made in committee had allowed amendments to be made to the Annex of the Bill whereas the Speaker had just ruled these types of amendments out of order as they sought to amend the Agreement and not the Bill.<sup>1</sup> Later, Mr. Steven Langdon (Essex—Windsor) also rose on a point of order concerning Motions Nos. 18 and 26 which, in his view, were incorrectly ruled out of order. Mr. Langdon argued that Motion No. 26, ruled out of order because it was previously moved in committee, should be allowed as it now was in a different place in the Bill itself, and therefore was no longer the same amendment. He also argued that Motion No. 18, though previously moved in committee, should be allowed, because it contained a new element and he wondered whether slight variations in the wording affected the intention of the motions.<sup>2</sup> The Speaker ruled on Mr. Axworthy's point of order and then following the comments of Mr. Langdon, the Speaker ruled again. The entire text of the ruling dealt with the 102 motions, including their selection and grouping for debate and the pattern of voting. Reproduced below is the text which concerns motions ruled not in order.

### DECISION OF THE CHAIR

**Mr. Speaker:** Before trespassing into the difficult ground of this ruling of amendments, I am informed, and I hope that this is so, that copies of my ruling, in both official languages, have been distributed. This may well be because we had a few extra days to task the translators with what has been for them a difficult time, which I know all honourable Members understand. I am sure Members would want me to indicate to our translators that we do sympathize with their difficulties and appreciate what they do for us so much of the time.

I am now ready to give a final ruling on the motions in amendment to Bill C-130, *An Act to implement the free trade agreement between Canada and the United States of America*.

There are 102 motions in amendment set down on the *Notice Paper* in relation to Bill C-130, *An Act to implement the free trade agreement between Canada and the United States of America*. As honourable Members know, I gave a preliminary ruling Friday last on the first three groupings. Members will thus bear with me, I am sure, as I go over all the motions in this final ruling as I wish them to be as complete as is possible.

....

On Motion No. 2, I have serious reservations because the intent of the amendment is to add a definition of cultural industries to the Bill. This is a substantive amendment as there is no mention at all of cultural industries in the Bill.

I would refer the honourable Member to Paragraph (10) of Citation 773 of *Beauchesne* [Fifth Edition], on page 233:

A substantive amendment may not be introduced by way of a modification to the interpretation clause of a bill.

The reference is to the *Journals* of May 21, 1970, page 835. Consequently the motion is out of order.

I have misgivings with respect to Motion No. 3. The Member's intention is to amend the agreement as published in the Canada *Treaty Series* under subsection 2 to exclude explicitly the large scale export of fresh water. I wish to remind the Member that treaty-making power is within the prerogative of the Crown and, therefore, the agreement itself cannot be amended. In *Beauchesne* Fifth Edition, Citation 778, it is stated:

When a Bill is introduced to give effect to an Agreement and the Agreement is scheduled to the Bill as a completed document, amendments cannot be made to the schedule. An amendment to the clauses of the Bill for the purposes of withholding legislative effect from the document contained in the schedule is in order; also as are amendments to those clauses which deal with matters not determined by the document contained in the schedule.

Consequently, I have to rule the amendment out of order.

I also have misgiving with respect to the admissibility of Motion No. 4. This motion seeks to amend Clause 3 which stipulates the purpose of the Bill and sets out the objectives of the Agreement in terms identical to those found in Article 102 of the Agreement. The Chair is of the opinion that this motion changes the intent of the objectives as stated in the Agreement and, therefore, rules it out of order.

....

Motions Nos. 7, 18, 26, and 34 were moved in committee. Motions Nos. 26 and 27 were ruled out of order and negatived in committee. Slight variation in the wording does not affect the intent of the motions. Therefore, according to Standing Order 114(10), I will not select them for debate.

I also have misgivings with regard to Motions Nos. 9, 10, 12, 13, and 14. There is nothing mentioned in the Bill or the agreement concerning aboriginal claims and the various programs referred in these motions. However, the intent of

these motions is to limit the operation of this Act with respect to these matters. I would, therefore, give the benefit of the doubt to the honourable Member and allow these motions to be put to the House. In addition, the honourable Member for Winnipeg—Fort Garry after consultation has convinced me that Motion No. 11, which was debated and negatived in committee, is of enough importance that it warrants further consideration.

....

I also have reservations with regard to Motions Nos. 15 and 35. These motions seek to ensure that the provincial Governments are free to exercise certain powers notwithstanding the provisions of the agreement. There is, however, no reference in the Bill to any restrictions or obligations on the provinces in the matters stated in the motions. Both the Bill and the agreement place the responsibility for implementation on the Government of Canada. These motions go beyond the scope of the Bill and are thus out of order.

Motion No. 16 causes me concern because the intent is to restrict the powers granted to the federal Government to proceed with legislation in the future with regard to this agreement as set out in Clause 6. This, in my opinion, goes beyond the scope of the Bill because it is introducing a new concept which is inconsistent with Clause 6. Therefore, I must rule it out of order.

....

Motions Nos. 28 and 29 infringe upon the financial prerogative of the Crown since the creation of such a commission or an inquiry board would require the expenditure or disbursement of public funds, and I refer honourable Members to Citations 540 and 773(7) of *Beauchesne* Fifth Edition. Thus, these motions in amendment are out of order.

....

Motion No. 36 causes the Chair concern because of its notwithstanding provision with regard to the right to require performance commitments from auto makers. It appears that the purpose of this motion is to ensure that Canada can set its own rules, regardless of any commitment under the agreement. Since the purpose of this Bill is to implement the agreement and Chapter Ten incorporates trade in automotive goods, I must rule the motion out of order.

I have serious reservations with respect to Motions Nos. 37 and 49A for two reasons. Motion No. 37 does not fit under part II, "Procurement Review Board", and the intent is to amend the Agreement. I would also refer honourable Members to the reasons given in earlier [ruling] Motion No. 3 out of order. Motion No. 49A is also an attempt to amend the Agreement. For the above reasons, I must rule the motions out of order.

....

The Chair has some misgivings with respect to Motion No. 66. The intent of this motion is to reserve to the Governor in Council the power to make certain orders more than once within a stipulated period. However, the agreement specifies that each party shall exercise such powers no more than once within that period. Since the honourable Member is being permissive in his motion, I am going to give him the benefit of the doubt and allow the motion. It will be debated and voted upon separately.

....

Motion No. 69 causes the Chair concern because of its notwithstanding provision with regard to Canada's right to exercise certain powers. It appears that the purpose of this motion is to ensure that Canada can continue to set its own rules in these matters regardless of any commitment under the Agreement. Since the purpose of the Bill is to implement the Agreement, I must rule the motion out of order.

....

Motion No. 94 is beyond the scope of the clause and is thus ruled out of order. The clause deals with the *Western Grain Transportation Act* and West Coast ports and this amendment attempts to introduce East Coast ports. This is not in order.

Motions Nos. 97 and 98 are ruled out of order because they seek to make the coming into force provisions of this Bill subject to conditions outside the legislative process. In this connection, I would refer honourable Members to *Erskine May*, Twentieth Edition, paragraph 10, on page 557.

....

I think I might add, for the benefit of honourable Members and the public watching, as I have said, the Bill we have before us is a Bill the object of which is to implement the agreement between Canada and the United States and, as a consequence, much of it is taken up with amending existing public laws, but there are additional paragraphs as well which of course are of some importance.

Honourable Members will realize that under the rules amendments aimed at altering the actual terms of the agreement are not acceptable, but other amendments aimed at the provisions of the Bill itself, under certain circumstances, have been acceptable and are of course set out in this ruling. I might just indicate to honourable Members and the public that as of the end of Thursday, the Chair had received 102 amendments and 77 of those have been accepted for debate. I think Members will find that they are presently in 26 groupings.

I want to thank all honourable Members who submitted amendments for their co-operation with the Table Officers. This, as all honourable Members will know, was no easy task given the number of amendments, and I hope honourable Members will feel that they have been carefully and properly dealt with....

I thank the honourable Member for Essex—Windsor for his kind remarks which I know will be appreciated by all of those who have worked hard on this matter.

We have had a practice for some time now which is working very well, that is, because of extensive consultations at the time amendments are tabled, the Chair has felt that for the most part it has not been necessary to hear further discussion on them. However, I am aware, as are other honourable Members in this Chamber, that this is a matter of some importance. All matters here are important, but this is one of some magnitude in the number of amendments that the Chair had to consider. I have, therefore, extended to the honourable Member for Winnipeg—Fort Garry and the honourable Member for Essex—Windsor the courtesy of listening carefully to what they have said. I appreciate their additional assistance to the Chair.

With respect to the two motions which the honourable Member for Essex—Windsor has raised with me, I will look again at Motion No. 26 and discuss it with the Table Officers who will communicate with the honourable Member. However, I think I can dispose of Motion No. 18 at this time. I remember this very distinctly and have asked the Clerk to bring me Motion No. 18.

While I understand perfectly the honourable Member's substantive reason for putting this forward, I am bound by the procedural law. Even the change to which the honourable Member refers does not get around the fact that, at least in the opinion of the Chair, it is out of order. Although I do understand the reasons behind the amendment, I regret that I cannot assist the honourable Member further.

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1. *Debates*, August 15, 1988, p. 18308.
2. *Debates*, August 15, 1988, p. 18309.

## THE LEGISLATIVE PROCESS

Public Bills: report stage; acceptability of motions

December 6, 1990

*Debates*, pp. 16357-9

**Context:** On December 6, 1990, the Speaker gave a ruling concerning the grouping and selection of report stage motions in amendment to Bill C-84 respecting Petro-Canada.<sup>1</sup> Following the ruling, Mr. Rod Murphy (Churchill) rose on a point of order to comment on the ruling and the rejection of certain motions dealing with the environment, official languages and the oath to be taken by members of the board of directors of the corporation.<sup>2</sup> He argued that the House, when considering Bill C-79, An Act to amend the Parliament of Canada Act, had included a provision for Members of Parliament to take an oath. This provision, which was also beyond the scope of the Bill, yet was allowed to proceed and therefore, in Mr. Murphy's view, the same principle should apply in this case. Following this, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order concerning the ruling out of order of amendments concerning the Official Languages Act stating that similar amendments had previously been ruled in order during consideration of another bill.<sup>3</sup> The Speaker heard comments from another Member<sup>4</sup> and then reiterated the reasons for his ruling. The texts of the Speaker's comments to both points of order are reproduced below.

### DECISION OF THE CHAIR

**Mr. Speaker:** I thank the honourable Member for Churchill for the intervention and also for his courtesy to the Chair in letting me know earlier this morning that he would want to make the point which he has made. He also understands, and he has indicated this to me, that the point he is making is not likely to result in a change in the ruling which the Chair has just given.

I wonder if I could take the House again into confidence with respect to these amendments. We have as much as possible been trying to have a process whereby the amendments would be the subject of very extensive discussion in some cases, certainly between the Member who is filing the amendment and the Table Officers.

When there is sufficient notice, that is a very practical and useful practice, and I thank all honourable Members for having co-operated as much as they have. Unhappily in this particular case there was very little notice for a lot of the amendments. I must tell the House that the Table Officers were working very late last night and also early this morning.

I anticipated there would perhaps be some discontent. I want to assure the honourable Member for Churchill that earlier this morning I went over all these amendments and I could anticipate perhaps the honourable Member's feelings. Without getting into it in great detail here because I do not want to set precedents where I am required after having given a ruling to then go into a great explanation

about it, there are distinctions that can be drawn, and had to be drawn, between the quite accurate observations the honourable Member for Churchill made with respect to Bill C-79 and the oath in that case and the oath in this particular bill.

If one examines the oath very carefully, it is not a simple oath. It is an oath with a very great deal of detail in it. It is those details which I felt clearly distinguished it from the oath in Bill C-79.

However, the honourable Member has in a very concise way put forward his feelings on this matter. They have been heard. I hope that on other occasions there will be time for more discussion than there was in this case because there was obviously very little.

I thank the honourable Member for his comments and also again his courtesy for giving the Chair notice that he wanted to make these points on the floor of the House....

I thank the honourable Minister for his intervention. I thought that I had made it clear that for procedural reasons there is a difference between a Crown corporation and what will become a privatized company. For that reason, procedurally I could not allow the amendment. I did say in my reasons "regrettably". There it is; it is a procedural thing. It is not for me to speculate on how the matter could be remedied. That is a matter for Members and not a matter for the Chair to comment upon.

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1. *Debates*, December 6, 1990, pp. 16356-7.
2. *Debates*, December 6, 1990, p. 16357.
3. *Debates*, December 6, 1990, pp. 16358-9.
4. *Debates*, December 6, 1990, p. 16359.

## THE LEGISLATIVE PROCESS

Public Bills: report stage; motions to delete clauses

April 3, 1990

*Debates*, pp. 10126-7

**Context:** *On April 3, 1990, the Speaker gave a ruling concerning the selection and grouping of the motions at report stage for Bill C-62 respecting the Goods and Services Tax. The Speaker expressed reservations over the practice of the filing of a series of amendments deleting each clause of the Bill. He expressed concern that such action could result in a repeat of the entire second reading debate. Mr. Jean-Robert Gauthier (Ottawa—Vanier) and Mr. Peter Milliken (Kingston and the Islands) both rose to express concern over the comments, stating that each amendment deleting a clause constituted a substantive motion which the House should be allowed to debate.<sup>1</sup> The Speaker's decision is reproduced in its entirety below.*

### DECISION OF THE CHAIR

**Mr. Speaker:** The honourable Member for Ottawa—Vanier raises a point which is certainly not unexpected under the circumstances. I want to make it very clear to honourable Members that I have made a ruling, but having said that, it is the right of honourable Members at any time in the future to raise matters of order with the Chair. This is some indication of my thinking on the matter.

I say to the honourable Member for Gloucester (Mr. Douglas Young) that I am sorry that there was not a chance for consultation but in this case, there wasn't. Honourable Members know also that all Table Officers and the Chair were very busily engaged yesterday and last night on not just this matter but others. I will not say anything more than that.

If the honourable Member for Ottawa—Vanier wants to raise this matter at another time, of course he is completely free to do so. I thank him for recognizing that when a ruling is made, he has to accept that. This is an example that can be used in discussion at another time and I would certainly not in any way make it impossible for the matter to be raised.

The honourable Member knows that these are not always easy decisions to make, especially with a bill which is very contentious and I am aware of that. It is why I pointed out to honourable Members that, at least at the moment, it would be very hard to say that there will not be very extensive debating time at report stage....

As I indicated to the honourable Member for Ottawa—Vanier and all Members a moment ago, any time Members want to rise on a matter of order in which they question or wish to consult with the Speaker, or make

recommendations to the Speaker and through the Speaker to other Members of the House, that is a perfectly normal practice here. I am not going to preclude that.

I also point out that the House has the power to change the Standing Orders and I refer specifically to Standing Order 76(5). Those standing orders give very strong powers of selection of motions to the Speaker. That is where the authority is given to me by all Members of the House. If Members want to change that, that is a matter for Members to consider.

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1. *Debates*, April 3, 1990, p. 10126.

## THE LEGISLATIVE PROCESS

Public Bills: report stage; motion beyond scope of bill; acceptability

July 15, 1988

*Debates*, p. 17617

**Context:** On July 15, 1988, as the House was to begin consideration at report stage of Bill C-82 respecting registration of lobbyists, Mr. Don Boudria (Glengarry—Prescott—Russell) and Mr. John Rodriguez (Nickel Belt) both raised points of order concerning motions in amendment to the Bill. Mr. Boudria and Mr. Rodriguez argued that Motions Nos. 2 and 3 respectively although adding elements did not go beyond the scope of the Bill and therefore should be ruled in order.<sup>1</sup> Later that day, the Deputy Speaker (Mr. Marcel Danis) rendered his decision and ruled the two motions in question out of order. The text of the ruling is reproduced in its entirety below.

### DECISION OF THE CHAIR

**The Deputy Speaker (Mr. Danis):** I would first like to thank the honourable Member for Glengarry—Prescott—Russell, the honourable Member for Nickel Belt and the honourable Parliamentary Secretary to the Deputy Prime Minister (Mr. Jim Hawkes) for their representations concerning the amendments at report stage. The Chair has taken the representations into consideration and is now ready to make a decision on Bill C-82.

There are eleven motions in amendment at the report stage of Bill C-82. These motions in the names of the honourable Members for Glengarry—Prescott—Russell, and Nickel Belt, cause the Chair some difficulty. The majority of these motions were dealt with in the legislative committee which studied the Bill.

Motions Nos. 1, 2 and 3 attempt to introduce a further element into Clause 5. This is of course with respect to the representation made by the honourable Member for Nickel Belt. Clause 5 states in part that “every individual who for payment undertakes to arrange a meeting or to communicate with a public office holder shall file”. Thus it appears that the principle or scope, and those words are used interchangeably, of Clause 5 is to restrict registration to items based upon arranging meetings or communicating with public office holders. In addition, the Bill makes no reference, among other items, to mass mailing, advertising campaigns, collecting information, or summary of costs. Accepting this point, that the scope of the said clause is as stated, then to insert additional items not previously covered would indeed take the clause beyond what was originally envisaged at second reading.

Accordingly, as paragraph 1 of Citation 773 of *Beauchesne* [Fifth Edition] states, an amendment is out of order if it is beyond the scope of the clause under consideration. That reference is further supported by *Erskine May*, Twentieth Edition, page 555.

I thus find that the proposed motions numbered 1, 2 and 3 are beyond the scope of the clause and therefore are inadmissible and consequently will not be put to the House.

Motions Nos. 4, 6, 7 and 8 were considered at length in the legislative committee. Nevertheless, after consultation, honourable Members have made the case that this matter of requiring lobbyists to register certain items is of enough significance that it warrants further consideration as permitted under Standing Order 114(10). Accordingly, Motions Nos. 4, 6, 7, and 8 will be debated together but voted upon separately.

Motions [Nos.] 5 and 9 were moved, debated but negatived at the committee stage. Therefore, in accordance with Standing Order 114(10), they shall not be selected for the consideration of the House.

Motion No. 10 is similar to Motion No. 9 and as a consequence will not be put to the House.

Motion No. 11 standing in the name of the honourable Member for Nickel Belt attempts to give the registrar more powers than those that were envisaged when the House gave the Bill approval in principle at second reading. Therefore, in accordance with paragraph 1 of *Beauchesne*, Citation 773, I declare it inadmissible.

To summarize for honourable Members, Motions Nos. 1, 2, 3, 5, 9, 10 and 11 are not admissible and will not be selected. Motions Nos. 4, 6, 7 and 8 are in order.

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1. *Debates*, July 15, 1988, pp. 17602-3, 17616-7.







